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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 52

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

No. 53

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

BRITISH ASSETS TRUST, LIMITED

No. 54

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

SECOND BRITISH ASSETS TRUST, LIMITED

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 8, 1944

CERTIORARI GRANTED, MAY 29, 1944

SUPREME COURT OF THE UNITED STATES

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THE SCOTTISH AMERICAN INVESTMENT CO., LTD.

1 In the United States Circuit Court of Appeals
for the Fourth Circuit

Appendix to brief for petitioner

Filed Sept. 13, 1943

Before United States Board of Tax Appeals

Docket No. 104249

THE SCOTTISH AMERICAN INVESTMENT CO., LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances

For Taxpayer: Marion N. Fisher, Esq. For Commr.: Harold
D. Thomas, Esq.

Docket entries

1940

Aug. 16—Petition received and filed. Taxpayer notified. Fee
paid.

Aug. 16—Copy of petition served on General Counsel.

Sept. 19—Answer filed by General Counsel.

Sept. 19—Request for hearing in New York filed by General
Counsel.

Oct. 1—Notice issued placing proceeding on New York cal-
endar. Answer and request served.

Nov. 12—Reply to answer filed by taxpayer. 11/12/40 copy
of reply served.

1941

Sept. 16—Hearing set November 3, 1941, at New York City.

Oct. 15—Motion for a continuance filed by taxpayer. 10/16/41
granted to December 1, 1941, in New York City.

Oct. 17—Hearing set Dec. 1, 1941 in New York City.

2 Nov. 18—Motion to consolidate with docket 108441 for
hearing December 1, 1941, filed by taxpayer.
11/21/41 granted.

Nov. 27—Application for subpoena to Gertrude Priester filed
by taxpayer. Subpoena issued.

Dec. 9-10—Hearing had before Mr. Arundell on merits. Sub-
mitted. Dockets 104249, 50, 51, 108440, 41 and 42
consolidated for hearing. Motion to file amended
answer lodged 11/24/41, granted 12/1/41—(This
motion applies only to Dockets 108440, 41 and 42).
Petitioner's brief in 45 days, Jan. 24, 1942—re-

spondent's in 30 days, Feb. 23, 1942—replies 15 days, March 10, 1942.

Dec. 23—Transcript of hearing of Dec. 9th & 10th, 1941, filed.

1942

Jan. 24—Motion for proposed findings of fact filed by taxpayer. 1/24/42 copy served.

Jan. 24—Brief filed by taxpayer. 1/24/42 copy served.

Jan. 24—Stipulation correcting transcript filed.

Feb. 19—Motion for extension to April 9, 1942, to file brief filed by General Counsel. 2/20/42 granted.

Apr. 2—Brief filed by General Counsel.

Apr. 17—Reply brief filed by taxpayer. 4/18/42 copy served.

Aug. 6—Findings of fact and opinion rendered, Arundell, Div. 7. Decision will be entered under Rule 50. 8/6/42 copy served.

Oct. 15—Agreed computation of deficiency filed.

Oct. 20—Decision entered, Murdock, Div. 3.

3 1943

Petition for review by U. S. Circuit Court of Appeals, 4th Circuit, filed by General Counsel.

Jan. 18—Notice of filing petition for review sent to Marion N. Fisher, filed.

Jan. 21—Proof of service of filing petition for review filed.

Feb. 20—Motion for extension to 4/18/43 to prepare and transmit record filed by General Counsel.

Feb. 20—Order enlarging time to 4/17/43 to prepare and deliver the record entered.

Apr. 19—Certified copy of order from the 4th Circuit, extending the time to July 17, 1943 to complete and transmit the record filed.

May 26—Statement of points filed by General Counsel. Proof of service thereon.

May 26—Designation of contents of record filed by General Counsel, with proof of service thereon.

May 31—Certified copy of order from the 4th Circuit that the clerk of the Tax Court transmit to this court a single consolidated transcript of record in dockets 104249, 104250, and 104251 filed.

(The docket entries in Docket No. 104250, British Assets Trust, Limited v. Commissioner of Internal Revenue (Tr. 6-4) and in Docket No. 104251, Second British Assets Trust, Limited v. Commissioner of Internal Revenue (Tr. 5-6) are substantially the same as the above.)

Transcript of testimony

HENRY A. JEFFERS, called as a witness on behalf of the Petitioners, being first duly sworn, testified as follows:

Direct examination by Mr. FISHER:

Q. Mr. Jeffers, what is your occupation or profession?

A. I am a tax accountant.

Q. By whom are you employed at present?

A. The firm of Barrow, Wade, Guthrie & Co.

Q. How long have you been employed by that firm?

A. 8 1/4 years.

Q. You were employed by that firm in 1936?

A. Yes, sir.

Q. Did you do any work in connection with the affairs of Scottish American Investment Co. in 1936?

A. No, sir.

Q. At any time?

A. No, sir.

Q. I mean at any later time than 1936?

A. Yes, sir.

Q. When?

A. In February 1938.

Q. What kind of work did you do for the Scottish American Investment affairs in 1938?

A. I managed their offices here in the United States.

Q. Did you have anything to do with their accounts?

A. Yes, sir.

Q. Did you actually do any of their bookkeeping?

A. No, sir.

Q. Did you have charge of or supervision over the bookkeeping?

A. Yes, sir.

Q. And who did the bookkeeping under your charge or supervision?

A. Mrs. Wasmuth.

Q. Did she have anyone to assist her in the work?

A. Yes.

Q. Who?

A. A Miss Davis, when I took over.

Q. Are you familiar with the books of account and the bookkeeping system of Scottish American Investment Co. in the office in this country?

A. Yes, sir.

Q. With respect to British Assets Trust, Mr. Jeffers, did you perform any duties in the affairs of that company?

A. Yes, sir.

Q. Were they in any way dissimilar to the duties performed for Scottish American?

A. No, sir.

Q. With respect to Second British Trusts, did you perform any affairs for that company?

A. Yes, sir.

Q. How were those duties—were those duties in any way different from the duties performed for the Scottish American?

A. No, sir.

Q. Were they in substance the same, would you say?

A. Yes, sir.

Q. Mr. Jeffers, I hand you the general ledger, Petitioner's Exhibit No. 23, for identification, and ask you to tell me the number of accounts carried in that ledger?

A. There are 50 at least.

Q. Are they nominal or real accounts?

A. Both.

Q. How many real accounts are there?

A. Six.

Q. And how many nominal accounts?

A. Forty-four.

Q. Does that ledger contain a security investment account?

A. Yes; a security investment control account.

Q. Does it show the value or cost of the securities carried in that account?

A. It shows the cost of the securities owned by the company.

Q. Are there any securities recorded in that account other than securities issued by United States corporations or other issuers?

A. Yes, sir.

Q. Do you mean that they are some foreign securities that are in that account?

A. Yes, sir.

Q. Are all the foreign securities of Scottish American Investment Co. in that account?

Mr. THOMAS. I object to that question. I would be purely hearsay on the part of this witness.

The MEMBER. I will overrule the objection.

Mr. THOMAS. Note an exception.

The MEMBER. Exception noted.

By Mr. FISHER:

Q. Answer the question.

A. I can't answer it.

Q. You don't know?

A. I don't know.

6 Q. Turn to the security investment control account, on what date was that opened?

A. December 2, 1936?

Q. What is the total cost of the securities carried in that account?

A. \$24,452,752.79.

Q. Is there any subdivision of those figures between securities issued by United States corporations or other issuers and foreign securities?

A. No, sir.

Q. At what cost are the securities in that account at the end of 1937, December 31, 1937?

A. \$25,035,121.29.

Q. 1938?

A. \$24,452,752.79.

Q. And at the end of 1939?

A. \$20,032,177.46.

The MEMBER. Those are cost figures?

The WITNESS. Yes, sir; in American dollars.

The MEMBER. May I ask one question; does that account from which you have just testified, was it made under your direction?

The WITNESS. Yes, sir.

The MEMBER. Where was the source of your information?

The WITNESS. Originally the information came from the head office abroad. The opening entry was from information supplied by them and after that it came from brokers and banks as to the purchases and sales of securities. The original entries were from the head office.

The MEMBER. All sales and purchases were made in this country?

The WITNESS. That is right; yes.

By Mr. FISHER:

Q. Now, I hand you the securities ledger of Scottish American Investment Co. Will you describe the character of entries, generally, in that ledger?

A. The ledger is divided into two parts, indexed alphabetically from A to Z. The first section contains accounts covering all bond investments owned by Scottish American. There is an account for each bond issue in here.

The second section contains an account for each issue of stock owned by the company in alphabetical order from A to Z.

Q. Do the accounts show with respect to shares of stock the numbers of certificates, that is to say, the numbers that the certificates bear?

A. Yes, sir.

7 Q. Does it show how many shares are represented by each certificate?

A. No, they do not.

Q. Does it show the date of acquisition of each certificate?

A. Not separately, no, sir.

The MEMBER. What does that mean, not separately?

The WITNESS. For example, the corporation may have acquired 1,500 shares of a given stock and had it registered in 15 different certificates. The numbers would naturally run in order. On the other hand, they may have acquired 500 shares and bought at different times and registered in different names. That may have occurred before 1936. We would have taken it up on our books as 1,500 shares and not identified particularly, the dates and the number of shares against the certificates.

We would know, however, that each of the 15 certificates was for 100 shares.

For instance, there are cases in which the number of shares owned and divided into 10-share lots or 50-share lots. We know that to be the fact.

If, for example, the certificate has an uneven number of shares, we also know that and we also know which certificate it is.

By Mr. FISHER:

Q. Can you turn to any account there and tell from the account the cost of shares purchased on any particular date?

A. Yes, here is the Allis Chalmers Manufacturing Co., 500 shares were purchased on October 1, 1936 for \$32,525.

Q. Taking the item that you just read, your ledger doesn't show then the number of certificates representing that 500 shares?

A. Yes, it does. The number of certificates are on the opposite page, posted against that block of stock, being 5 certificates, the numbers are given.

Q. Then I will ask you again, can you tell the number, the date of acquisition and the cost of any particular certificate bearing on those accounts?

A. Yes, sir.

The MEMBER. I thought the answer before was yes or no. I thought there are some instances where he can't.

Q. Is that true with respect to the securities on hand December 2, 1936?

A. Yes, sir.

Q. Can you illustrate that by any entry there?

A. Yes, both of these blocks of stock.

Q. What blocks?

A. This is Allis Chalmers to which I previously referred were acquired prior to December 2, 1936.

Q. All right.

The MEMBER. Were they all acquired on one day?

The WITNESS. No, sir, 500 shares were acquired in October and 500 in November, 1936. The 500 were acquired, I think all at one time according to this entry here.

The MEMBER. And one certificate for 500 shares and you know the cost?

The WITNESS. The 500 shares were purchased and issued in 5 certificates of 100 shares each.

By Mr. FISHER:

Q. If they were issued in 5, 100-share certificates, would your ledger show that fact?

A. Yes, sir.

Q. If they were issued in one certificate of 500 shares, would your ledger show that fact?

A. Yes, sir.

The MEMBER. Your prices may be averaged? For example, you may buy 100 from A and 100 from B and 100 from C and at some variance in price and you get one certificate of 500 shares and you put the total as if they were bought at an average price as of that day, is that correct?

The WITNESS. That is correct.

By Mr. FISHER:

Q. If there had been any securities purchased in 1937, by what means would the office in this country get information as to that purchase?

A. Advices from the bank through which the securities were paid for, if purchased, and from the broker.

Q. From both sources?

A. That is right.

Q. In what form would the advice come from the broker?

A. Regular brokers advices as to the purchases of the securities.

Q. In the case of securities purchased after December 2, 1936, would you know the cost of each certificate if more than one certificate were purchased on a given day?

A. I can't answer that question. You see, those details were taken care of by the bookkeeper.

Q. Have you counted the number of accounts in that ledger for the end of 1936?

A. Yes, sir.

Q. Can you say how many accounts there were?

A. If I refer to my notes; 340.

Q. Did each account represent securities issued by a separate corporation or other issuer?

A. No.

9 Q. Have you counted those securities to ascertain how many separate corporations or other issuers are represented in the investments recorded in that ledger?

A. Yes, sir.

Q. How many?

A. As of what date?

Q. As of the end of 1936.

A. There were 267 issues.

Q. Issuers?

A. Issues.

Q. Issues?

A. That is right.

Q. How many accounts were there at the end of 1937?

A. I do not have that figure.

Q. I hand you the journal of the Scottish American Investment Co. and ask you to describe generally the opening journal entry giving its date.

A. In order to supply the date, I will have to read the preamble. "This company has established a New York office as of December 2, 1936, and the following securities were transferred from the head office account to these books." There is no date.

Q. No date on the entry?

A. No, sir.

Q. Do you know of your own knowledge when that entry was made?

A. No, sir.

Q. What does that entry contain, what information?

A. It contains a complete list of all securities held in the United States by the Scottish American Investment Co., the investment in American dollars in those securities, the number of shares or par of bonds and the date acquired.

Q. Would the number of stocks and bonds described in that opening entry correspond to the number of accounts set up in the security ledger?

A. Yes, sir.

Q. Mr. Jeffers, have you counted the number of entries that were made in that journal for the period between the opening and the close of December 1936?

A. Yes, sir.

Q. How many were there?

A. Thirteen pages.

Q. Does that cover all the entries made prior to January 1, 1937, or does that cover only the opening entry?

Mr. THOMAS. I object. You say the entries made prior to January 1, 1937. I don't think this witness knows when the entry was made.

10 Q. On entries made on a date prior to January 1, 1937?

A. The number of pages that I gave, 13, does not cover all of the entries made on dates prior to January 1, 1937.

Q. What does that number cover?

A. Only the opening entry.

Q. Were any other entries made under date of January 1, 1937?

A. Yes, sir.

Q. How many?

A. Four.

Q. Four entries?

A. Pardon me, I am sorry; eleven.

Q. What character of entries did that embrace?

A. Well, all entries not involving cash.

Q. Would it cover acquisition of securities?

A. No, sir.

Q. Will you read at random two entries made in that period?

A. "December 29, 1936, debit securities control account, \$9,225, 144 shares, Youngstown Steel & Tube Co., common.

"Credit, securities control account, \$9,000, Youngstown Sheet & Tube Co. 31½ per cent, debentures due February, 1951, to record the conversion of 9,000 par value bonds into stock."

Q. Go anywhere on the next page and pick an entry in the middle of the page and read it.

A. "December 31, securities control account, \$14,110.20"—that is debit securities control account. "600 shares, United States Smelting, Refining & Mining Co., 7 per cent cumulative preferred. Credit gain or loss on securities sales, \$14,110.20 to record gain realized on the sale of 600 shares of United States Smelting, Refining & Mining Co., 7 per cent cumulative preferred as follows: "Proceeds from sale \$43,500 less cost \$29,389.80. Gain \$14,110.20."

The MEMBER. A moment ago you testified about some gains in United States Smelting, Refining & Mining Co. stock.

The WITNESS: Yes.

The MEMBER. What did that entry indicate, a sale?

The WITNESS. The purpose of the entry was to record the gain from the sale. You see, the sale itself goes through the cash book because it's a cash transaction. In order to get the gain or loss into the P and L account, we have to put an entry in the journal.

The MEMBER. Does your journal show the entries of sales made?

The WITNESS. Not this one.

The MEMBER. Why not that one?

The WITNESS. This only shows the gain or loss from the sale.

The cash transaction itself. That is the actual sale where we get cash goes through the cash book. The actual purchase, where we spend the cash, goes through the cash book. Where we make a sale we have to put the journal entry separately from the cash transaction.

By Mr. FISHER:

Q. Is it true or not that every sale would entail the making of a journal entry?

A. Yes, sir; it would.

Q. How about purchases?

A. No.

Q. Now, I hand you the cash book of Scottish American and ask you to tell me what transactions were entered in the cash book?

A. All transactions involving cash, either receipts or expended are recorded in the cash book.

Q. Was any voucher system maintained?

A. Yes, sir.

Q. Would you describe the character, the kinds of vouchers you were maintaining?

A. We had a cash receipts voucher and a cash disbursements voucher.

Q. Are all the cash receipts and disbursements covered by voucher?

A. Yes, sir.

Q. What I mean is that is the accurate description of them as cash receipts vouchers and cash disbursements vouchers?

A. No; I think it would be more accurate to say credit vouchers and debit vouchers.

Q. What character of items were entered upon credit vouchers?

A. Sales of securities.

Q. I hand you a yellow folded slip of paper bearing a number 274, and ask you to say what that is?

A. This is a credit voucher.

Q. Of what?

A. Scottish American Investment Co., Ltd.

Mr. FISHER. I ask that that be marked for identification as Petitioner's Exhibit next in order.

The CLERK. Petitioner's Exhibit 27 marked for identification.

(Document received and marked "Petitioner's Exhibit 27" for identification.)

By Mr. FISHER:

Q. What transaction is entered on that voucher?

A. The record, it records the sale of 100 shares of Hiram Walker, Gooderham & Worts, Ltd. cumulative preferred stock.

12 Q. Does that voucher have any paper attached to it?

A. Yes, sir.

Q. What is attached to it?

A. There are two papers attached, one is an advice from J. P. Morgan & Co., stating that we have today delivered against cash received and credited to your account 100 shares of Hiram Walker, Gooderham & Worts, Ltd. cumulative preference, \$1,903.96.

Q. What is the other paper attached?

A. A broker's advice from Baker, Weeks & Harder.

Q. Describing what transaction or advising what?

A. It states that they have sold for our account 100 shares of Hiram Walker, Gooderham & Worts, PR., meaning preference.

Q. Were any other types of transactions recorded in credit vouchers?

A. None that I can recall.

Q. I hand you a book bearing the legend outside British Assets Trust and ask you to state what that is?

A. This is the ledger of the British Assets Trust, Ltd.

Mr. FISHER. I offer this for identification as "Petitioner's exhibit next in order.

The CLERK. Petitioner's Exhibit 29 marked for identification.

(Document received and marked "Petitioner's Exhibit 29" for identification.)

By Mr. FISHER:

Q. I show you another book marked outside British Assets Trust and ask you to state what that book is?

A. This is the security ledger of the British Assets Trust, Ltd.

Mr. FISHER. I ask that this security ledger be marked for identification.

The CLERK. Petitioner's Exhibit 30 for identification.

(Book received and marked "Petitioner's Exhibit 30" for identification.)

By Mr. FISHER:

Q. You stated Petitioner's Exhibit 29 just marked for identification was the ledger, a ledger, what is the distinction between that and the security ledger you have just identified?

A. The security ledger is a subsidiary ledger.

Q. Now, Mr. Jeffers, have you counted the number of accounts in the ledger?

A. Yes, sir.

Q. Which I will refer to for convenience as general ledger. How many accounts are in that ledger?

A. 49.

13. Q. Does that ledger contain a record of the security investments and if so, describe the record.

A. There is a security control account in the ledger which at all times reflects the total net dollars investment in securities in the United States.

Q. What do you mean by net dollars investment?

A. Probably I should have said total.

Q. What new purchases of securities would be entered into that account? Let me put it this way: Would new purchases of securities be entered in that account?

A. Yes, sir.

Q. Would sales of securities be recorded in that account, reducing the investment in that account?

A. Yes, sir.

Q. Does the account show the dollar figures with respect to the securities?

A. Yes, sir.

Q. Are those figures cost or value; if not either, what?

A. Cost.

Q. At what cost does the account show the securities at the end of 1936?

A. December 31, 1936, \$15,163,339.80.

Q. Will you give the corresponding figure for the end of 1937?

A. \$16,206,988.50.

Q. And the corresponding figure for the end of 1938?

A. \$16,011,067.32.

Q. At the end of 1939?

A. \$11,961,056.79.

Q. There is a noticeable decrease between the end of 1938 and the end of 1939 in the figures you have just testified to. What does that indicate?

A. Heavy sales in 1939.

Q. There was a noticeable difference in the corresponding figures testified to by you with respect to Scottish American between 1938 and 1939?

A. Yes, sir.

Q. What does that indicate?

A. The same thing.

Q. Do you know the occasion for such heavy sales by these companies?

A. No, sir.

Q. I hand you the security ledger of British Assets Trust. Will you describe the character of entries contained in that security ledger in general terms?

14 A. It contains accounts, it contains an account for each security, bond or stock owned by the British Assets Trust in American dollars in the United States.

Q. Are the records entered in that security ledger different from or similar to the records that you have described in the security ledger for Scottish American Investment Co.?

A. They are similar to those in the Scottish American Trust.

Q. How many such accounts were there in the security ledger at the end of 1936 as of the end of 1936?

A. Approximately 381.

Q. At the end of 19—do you have that figure for the end of 1937?

A. I do not.

Q. I hand you a book with the name British Assets Trust on it outside, and ask you to state what that is?

A. This is the journal of the British Assets Trust.

Mr. FISHER. I ask that this be marked for identification as Petitioner's next number in order.

The CLERK. Petitioner's Exhibit 31 for identification.

(Book received and marked "Petitioner's Exhibit 31" for identification.)

By Mr. FISHER:

Q. Mr. Jeffers, I ask you to describe in general terms the opening entry in that journal.

A. There are two opening entries.

Q. Describe them in order.

A. Precisely the same. They record the number of securities owned by the British Assets Trust in the United States in dollars as of December 2, 1936. They show the number of shares or par of the bonds, and the cost in American dollars in addition to a description of each security. One entry records the securities held at J. P. Morgan & Co., the other entry which is precisely the same in form records the securities held at the National City Bank of New York.

Q. What is the total dollar value in the entry on the securities held by J. P. Morgan & Co.?

A. \$4,132,157.69.

Q. And the total figure with respect to securities at the National City Bank?

A. \$10,842,201.98.

Q. Have you counted the number of entries in that journal under date prior to January 1, 1937?

A. Yes, sir.

Q. How many were there?

A. There were six.

15 Q. Does that include opening entries?

A. Yes, sir.

Q. How many entries were there in that journal for 1937?

A. 68.

Q. And how many pages of the journal were used for recording the entries?

A. 22.

Q. For 1938, give me the number of entries?

A. 78.

Q. And the number of pages in the journal?

A. 29.

Q. For 1939, the number of entries?

A. There were 78 also.

Q. And the number of pages?

A. 36.

Q. Is the character of the entries in the journal you now have before you different from or similar to the character of the entries in the journal of Scottish American Investment Co.?

A. They are similar to it.

Q. I hand you another book marked with the name British Assets Trust, Ltd., and ask you to state what that is.

The MEMBER. After you have illustrated them is it necessary to take each book to get all that data?

Mr. FISHER. There isn't any controversy of figures involved, your Honor. I am just trying to give a fairly comprehensive but not too extensive description of the bookkeeping system and the volume of bookkeeping.

The MEMBER. I understand that is identical with each of the companies.

Mr. FISHER. The system.

The MEMBER. And the number of pages or entries depends entirely on how many sales or purchases or what they are?

Mr. FISHER. Right.

The MEMBER. So that as I understand his testimony, they entered here all the purchases and sales of receipts and dividends and interest?

Mr. FISHER. On securities held in this country.

The MEMBER. That is right.

Mr. FISHER. That is correct.

The MEMBER. Well, then, it doesn't seem to me after you once illustrated it as much as you have, to go through all this.

Mr. FISHER. Well, I don't want to have any distinction made between the companies and they are really three clients and I would like the record to stand up so that it wouldn't appear on reading the record that facts were really different than they are. The volume is different, naturally, because they had different amounts of securities and different numbers of transactions.

The MEMBER. I don't understand that they are different and I don't believe you make any contention that they are different.

Mr. THOMAS. No; I don't believe so. I think the method of bookkeeping and accounting is the same for all three companies except for the volume of transactions which would depend on the particular size of the company and the number of transactions. I want to say this, however, that I did raise a point for 1936 as to just what the activities were during the month of December 1936. As to whether that is applicable to all three companies alike or not, I don't know.

The MEMBER. I suppose that could be ascertained.

Mr. FISHER. The witness tomorrow will explain what was currently done during December 1936. The permanent form of books was not established at that time and he will explain what was done during that interval before they established, decided upon and made entries in the permanent form of books and that is why I made the distinction in the form I asked the questions for the period prior to 1937.

Q. Mr. Jeffers, did the Second British Assets Trusts have a general ledger?

A. Yes, sir.

Q. Was it different in any way substantially from the general ledger of the British Assets Trust and Scottish American?

A. No, sir.

Q. Did Second British Assets Trusts have a security ledger?

A. Yes.

Q. Did it differ in any respect from the other security ledgers?

A. No, sir.

Q. Did it have a journal?

A. Yes, sir.

Q. Did it have a cash book?

A. Yes, sir.

Q. Did they differ in any respect—in any substantial respect from the other journals and cash books?

A. No, sir.

Q. Did British Assets Trust have a voucher system?

A. Yes, sir.

Q. Did Second British Assets Trusts have a voucher system?

A. Yes, sir.

Q. Did they differ in any respect from the voucher system of Scottish American Investment Co., Ltd.?

A. No, sir.

17 The MEMBER. What are debit vouchers, what they received?

The WITNESS. A debit voucher was used for the purchase of securities, expenditures of all expenses were all debit vouchers, in addition to that, we made out a debit voucher for expenditures of new securities, in the purchasing of new securities. Debits have to do with all purchases and expenditures of money.

Q. What was the cost recorded on the ledger of securities of Second British Assets Trusts at the end of 1936?

A. I don't have that figure.

Q. Can you get it from the ledger?

A. Yes; ledger or journal.

The MEMBER. It seems to me these figures are more or less immaterial: Can't you just read the figures in the record by agreement?

Mr. FISHER. Yes; I don't have to put it in, at December 2, 1936, the Second British Assets was \$8,457,000 the nearest even number.

Mr. THOMAS. That is agreed to.

Mr. FISHER. At the end of 1937, \$8,615,000. At the end of 1938, \$8,360,000. At the end of 1939, \$6,078,000.

Mr. THOMAS. I will agree to those figures.

Cross-examination by Mr. THOMAS:

Q. This is Petitioner's Exhibit No. 25 for identification, I believe. Is that what you call the journal of the Scottish American Co.?

A. Yes, sir.

Q. And I believe you testified that there were 13 pages of opening entries?

A. That is right.

Q. Aren't those opening entries simply listing the security which the Scottish American Investment Co. had in the United States?

A. The 13 pages include the entry and the usual explanation of the entry.

Q. But I mean, isn't that just a list of the securities?

A. It so happens that the explanation is a list of the securities making up the total amount of the entry both debit and credit.

Q. And those were securities, I believe, posted to a security ledger?

A. That is right.

Q. Showing cost?

A. That is right.

18 Q. And I believe you stated that when purchases and sales of securities are made, the books record that so that all the time you have a record of the securities owned?

A. That is right.

Q. Well, in the recording of purchases and sales of securities, what was the source of information from which you made the entries on the books?

A. The source of information was from the bank and the broker in each case.

Q. Now, as I understand it, and tell me if I am incorrect, the main office of each of these petitioners in Edinburgh when they wanted to buy or sell securities, would cable their broker over here in the United States to buy or sell?

A. I am not sure of the exact *modus operandi*. All we need receive are these advices from the brokers and banks.

Q. In other words, the purchases or sales had already been made when you received them?

A. The instructions have been received.

Q. And you would be notified by the broker, J. P. Morgan, or the National City Bank, that a certain sale had been made at a certain price, or a certain sale had been made at a different price?

A. That is right.

Q. No checks for the purchase price of the securities were ever made out in your office?

A. Not to my knowledge; no, sir.

Q. And those checks in payment of the securities sold by petitioners never came through your office?

A. Not to my knowledge; no, sir.

Mr. THOMAS. May the record show when I speak of your office or the United State office, I am using it as a general term and not any admission that it is an office or place of business in the United States within the meaning of the statute.

The MEMBER. I suppose you also mean the office of these companies here?

Mr. THOMAS. When I refer to "your office" or "the United States office," I am referring to what is alleged to be an office of the petitioners in the United States.

By Mr. THOMAS:

Q. Now, Mr. Jeffers, isn't it true that practically these same kinds of records are kept by the main office of each of the petitioners in Edinburgh?

A. I would have to express my opinion. I am not familiar with their bookkeeping system. I know this, as a matter of fact, that our records here are the original records, copies of which were sent abroad, which would make it unnecessary for them to duplicate them over there. I don't believe that they would go to the trouble of duplicating of what has been done here. These are the original records.

Q. They would necessarily know, the Edinburgh main office, what securities they had on hand at all times, what ones they sell and buy?

A. I would assume so.

Q. They have direct information from their brokers?

A. Yes, sir.

Q. From their custodian?

A. Yes; in a general way they might. This is purely my opinion, of course.

The MEMBER. You don't report to the Edinburgh office each and every transaction?

The WITNESS. No, sir; the only report we make consists of copies of the cash sheet and copies of the journal entries.

The MEMBER. How frequently do you furnish those?

The WITNESS. Once a month.

By Mr. THOMAS:

Q. Mr. Jeffers, what is the course of entries recording the receipt of dividends checks?

A. The dividend check itself.

Q. What is the source of entries regarding interest?

A. Advice from the bank that the coupons have been clipped and the interest collected.

The MEMBER. I don't understand the witness's statement about the dividend checks?

The WITNESS. He asked the source of the entry for the receipt of dividends. We naturally make the entry when we receive the check. The check is the basis of the entry.

The MEMBER. To whom is the check sent?

The WITNESS. Sent to the office of these companies here in the United States. Sent direct to us and we make the entry, and deposit the checks in the bank ourselves.

The MEMBER. In what type of bank?

The WITNESS. I think it is just a general bank account with Morgan & Company, and the National City Bank. There are four of them, two with Morgan and two with the National City Bank. The British Assets Trust has two bank accounts, one with Morgan & Company and one with National City.

The securities held with Morgan & Company in those cases, the dividends are deposited with Morgan & Company. In the securities held with National City, the dividends are deposited there.

In the other two cases the Scottish American has a bank account with Morgan, and the Second British with National City Bank only.

The MEMBER. What endorses them?

The WITNESS. We endorse them with a rubber stamp and deposit them. We have a special deposit ticket that we use.

By Mr. THOMAS:

Q. These stocks are listed in the names of nominees, are they not?

A. Yes, sir.

Q. And those nominees are at all times, and have been at all times employees of, or associates of J. P. Morgan & Company, Inc.?

A. They are employees of the National City and J. P. Morgan.

Q. I meant to include also the National City in the case of the two accounts.

A. Yes, sir.

Q. Doesn't that nominee have to do anything about endorsing the dividend checks?

A. No, sir; for example, a dividend order was issued to each company instructing them to issue it direct to the company and not to the nominee.

Q. But the nominee would be the record owner of the stock?

A. He is the record owner, yes, sir.

Q. Then, as I take it, Mr. Jeffers, these books that you have described for each of the petitioners, they really show the amount and detail of securities owned at all times, and whenever there is any change because of purchases and sales those are recorded on the books?

A. Correct.

Q. And the books record dividend income, bond interest income and record the paying out of the office expenses over here?

A. That is correct.

Q. Isn't that in general what the books cover?

A. I wouldn't say that that would be all, no, sir.

Q. Did your books, for instance, show the amount of cash on deposit at all times with the custodian banks?

A. Yes, sir.

Q. Was that information furnished by the banks, monthly?

A. We received the usual bank statement and we reconciled that with our own cash accounts.

WALTER A. COOPER, called as a witness on behalf of the petitioners, being first duly sworn, testified as follows:

21 Direct examination by Mr. FISHER:

Q. What is your occupation?

A. I am a certified public accountant, presently a member of Peat, Marwick, Mitchell & Company.

Q. Were you ever a member of the firm of Barrow, Wade, Guthrie & Company?

A. I was, from some time in 1927 until October 31st, 1940.

Q. Prior to 1927 were you employed by Barrow, Wade, Guthrie & Company?

A. Yes; I was employed by them from 1917 until I became a partner.

Q. Did the clients of Barrow, Wade, Guthrie & Company during the time you were a partner, include any foreign corporations?

A. Yes; quite a number.

Q. Would that number be substantial?

A. I should say upwards of a hundred, anyway.

Q. Were any substantial proportions of those corporate clients investment trusts?

A. The majority were investment trusts, probably, oh, close to 75.

Q. In what country were these clients, principally located?

A. Almost all in Great Britain. A few in France, and Belgium, but mainly Great Britain.

Q. What is the character of business of these companies?

A. Well, they are all investment trusts and I call them pure investment trusts, which is a peculiar term, but I use that to distinguish between the usual investment trust which we have over here, which is more of a trading company. And these companies are dealing only with investments, only for the purpose of income. They don't pay any attention to capital gains, and can't pay dividends out of them as their charter prevents that and they don't figure them out, and that is why we had so much trouble with the tax returns, because they didn't figure them.

This is wholly predicated on having what they call ordinary shares preceded by several grades of securities by preferred shares down to secured bonds all paying certain amounts of interest or dividends, and then receiving that money so as to produce a greater return.

They usually look for a margin of about 1 to 1 $\frac{1}{4}$ per cent gross difference what they can get and what they can pay out, and after they allow for the expense of operation, the balance is for the common or ordinary shareholder, and that is the way they operate.

22 Q. What arrangements had these companies had regarding the care of the securities, the collection of their income on American securities prior to December 1936?

A. Well, their securities were in the hands of either J. P. Morgan & Company or the National City Bank in a custodianship account, and those banks would collect the income and interest and whatever was to come in and credit the accounts of the several companies involved.

Q. Did you take up the question of changing these arrangements in any way with the banks after you were appointed assistant secretary?

A. Well, these investment companies have to leave their securities in the names of nominees, so they could make good delivery whenever they are sold and we discussed them with the two banks the question of arranging for the payment of dividends directly to the companies at their own office. That meant, in order to avoid confusion, they had to create new nominees or appoint new nominees for these companies so that they would have only the securities of one of these companies, so that was the procedure eventually developed, and both Morgan and the National City Bank transferred all these securities to special nominees.

They filed what we call mandates or dividend orders, with the companies in which we had invested, directing them to make all disbursements to the companies at their offices and send the companies at their offices all notifications so that the nominee merely held securities in his name, and of course the physical paper was in the possession of the bank, and whoever handled it in the bank would be somebody different from the nominee, and we collected all dividends except the coupons for the interest on the bonds, and they would collect that by depositing the coupons for us.

Q. Did you have authority to draw checks on your single signature?

A. Well, I had the same authority as any other director or officer, which was to draw up to \$5,000 per month on the regular funds and draw unlimited amounts on joint signatures. That

was the arrangement for all officers and directors. Not all of them could draw up to \$5,000 per month limit, and anything above that had to be a joint signature.

Q. Is that true of both, the two Scottish and the two investment trusts?

A. Yes, sir.

Q. You said the same as any officer or director. You weren't a director?

A. No; but they didn't have any more authority than the secretary or assistant secretary.

23 Q. Were the bank accounts on which you had authority to draw checks, special accounts, or separate from other funds of this company, or were they ~~general~~ funds with the banks here?

A. Well, they were general funds and I had authority to draw on those funds. They were really the only accounts they had except in Morgan, and they may have had a loan account. That wasn't a bank deposit. That was money borrowed, though occasionally it might run into a credit balance.

My authority was on any funds that J. P. Morgan had belonging to these companies, and the same with National City.

By Mr. FISHER:

Q. Mr. Cooper, tell us what steps you took in connection with the opening of the office here?

A. Well, when we got the letters authorizing us to go ahead and probably after I received the cable, knowing that the instructions were official, and on the way we started from two angles. One, opening the office and getting prompt space, and I took that up with the Equitable Building and I took over two rooms on the floor below us on a lease basis running until the end of their season, which was the following May 31st, giving me the right to cancel it at any time I wanted to do it on thirty day notice, because it came so suddenly that I just did not have time to shop around or do the best I could. I just said to the Equitable Building, how much rent, and whatever it was, and then we took up with the bank the question of issuing the mandate or dividend orders and ran into this complication about nominees, and I then took up the difficulty of that situation with some of the banks who act as paying agents, and with some of the corporations themselves.

We ran into this difficulty that, if a particular nominee of, say, J. P. Morgan & Company, had in his name securities belonging not only to one of our companies, but to other owners of stock in

that company; that they would have to issue a dividend order on, say, 2000 shares of the stock of "X" corporation and the X corporation or the banks who were acting as paying agents, were a little concerned about possibly getting all mixed up in paying their dividends, and if they had shares in the names of John Jones, nominee, we decided the best way would be to appoint one nominee for each company, who would act as nominee for this company and nobody else, and they would simply issue a dividend order on any shares in his name. That was the way it was finally arranged with the banks.

Q. Did such an order have to be issued with respect to each dividend?

24 A. No; it was issued with respect to the shares listed in the nominee's name, and once that was filed with the corporation with which we held the investment, or with the paying agent, that covered anything that happened from then on.

Q. Did you arrange for any clerical or accounting help for the work of carrying on the offices in this country?

A. That started, of course, as soon as we had our arrangements with the banks, and our office space, knew where we stood, I then took a man named Voles and who at one time was a cashier of the firm and was now engaged in handling both accounting and security work for different individuals and corporations, although very much smaller than this situation, and I had him start on the problem of developing the kind of accounts we wanted to keep, the type of records and the methods of operation.

He stayed on it from the time he started, which was some time in December, until I think it was early January, when Miss Priester, she is a certified public accountant, was taken on, and I couldn't leave Mr. Voles take care of it for all time, because he had other matters to handle also, and couldn't devote all his time to this company, and I took Miss Priester on, and put her down in the office of the company and in charge of that office, and I think immediately, or shortly after, we engaged an assistant, Miss Wasmuth.

Meanwhile, however, I had two or three of the regular staff, men of Barrow, Wade, Guthrie & Company working on it in order to try and catch up, as fast as we could and as far as we could.

A man named Allen and Mr. Peavy, as well as Mr. Voles, Miss Priester, and Miss Wasmuth, and then after we had our system developed we did not really need as much help, and my compensation was the difference between what I got and what I had to pay out, and I was very much concerned in getting that down to an efficient basis as soon as possible.

Q. The ledger, journal, and cash book have been identified in the record. Were those as they now exist: actually begun at any time during 1936?

A. No; we started with our accounting on a temporary record basis until we were able to, well, first find out what sort of transactions we had, and how we would have to keep the records to fit in with actual practices. Also after we developed a form we sent it abroad to find out if it was satisfactory to them because these were to be the records about United States transactions and after that was decided upon, we had to have them printed, so that it was some time in probably late January or early February before we actually received our forms which constituted our accounting records.

25 Q. We, meanwhile, kept all the data on temporary records and we finally wrote them up on final forms after they were obtained.

Q. Did you send copies of any of the accounting records to Edinburgh?

A. Oh, yes; we sent them copies of each of our records. That is the reason we adopted a loose-leaf sheet that could be adopted in duplicate and later on in triplicate form which made it necessary for these companies, and we kept the original and sent the other two abroad about three days after the end of the month.

We don't send them copies of the ledger, but the journal, cash receipts, and cash disbursements, and we also had to get binders and send them over because this constitutes their accounting record, except as they convert the cash into Sterling, which they have to pick up on their records.

Q. I show you a folder with a number of papers together and ask you to tell us what that is?

A. Those are the original temporary records where we kept the records until they were written up.

Q. On each company?

A. This is the Scottish American; this is the cash receipts.

Q. Did you have similar temporary records for the British Assets Trusts companies?

A. We had the same type of records for all three.

Q. Were the figures entered on those records that we have described as temporary records currently entered?

A. Yes, sir; for example, the cash receipts would be entered the day we got the check, because we would have to write our cash record up simultaneous with making out the deposit slips so that we would have a record of what it consisted of. Except I might say here, possibly some of these early receipts did not come to us, but went directly to Morgan, or National City, and they would advise us that they had received certain dividends and

we then wrote it up from their advice, but this started in December and in many cases these dividends were payable later on in December to start as of record, as of the first of December.

We had not been able to get our transfers made and mandate in so that the dividends were ~~still going to the old nominee~~ and by the end of December we had it pretty well cleared up, so it may be that some of those December dividend receipts were not received by us in check form, but were received by the banks and they advised us.

Q. Mr. Cooper, what reports were you required to make to the home office?

A. What do you mean by reports?

Q. Accounting reports.

26 A. Well, we were required to send them a carbon copy of the cash receipts and disbursements book which is from our own record, and in the case of Scottish American they insisted that I certify it, whereas the British Assets Trust did not require that, and we sent a copy of the journal entries. They were sent over when those journal entries were completed sometimes maybe a week behind the completion of the cash record because we did not work that up until after the month was over.

We also sent the annual statement at the end of December, and frequently on December 1st, we would send out a statement up to date because they sometimes wanted to be in a position to close their accounts rapidly, and I know what we would do would be to send them a statement of receipts up to a certain point, say, December 15th.

We then knew what dividends would be received between the 15th of December and the 31st, and we could say our receipts were so much, and from then on to the 31st it would be so much. That was set on the basis that if we did not get the receipts we estimated, we would cable them the differences and, why, so that they knew on December 31st just what we knew, just how much income they would receive during the year and we did the same thing on estimated expenses.

We knew what expenses we would have to pay and sent that out in advance and later confirmed it with actual requirements of the entire year, and we also sent copies of the tax returns too.

Q. It was pointed out in cross-examination of the previous witness that there were checks drawn for office expenses, certain office expenses and sundry items, by yourself, and that those checks were drawn on the general account with the banks.

Did your arrangement with these companies provide that out of your compensation you would pay all expenses of every nature?

A. No; I was not to pay the postage, cablegrams, traveling expenses, or anything like that, that incurred stationery or that

kind of stuff. I was to pay all the so-called general office expense, that is, providing the place, and assistance or service necessary.

For example, they paid for the printing of those special cash sheets. They paid cablegrams.

Q. Was the rent for the office paid out of your compensation, or fee?

A. Well, originally we started that way, and later on they paid it direct. That happened to change, I think, after a couple of months. As a matter of fact, it was changed the first month. They started off with the idea that I would pay it, but when I opened a special office I figured they ought to pay it and told them so, and so they paid it.

Q. Did they reduce your original fixed compensation by the amount of rent?

A. They adjusted the amount as they went along, but that was a more or less tentative arrangement, the amount of the compensation, because nobody knew just what work would be involved and what I would have to do and how many people I would have to engage.

Our arrangements were flexible. They said, "We will pay you so much money," and I wrote back and said, "That is all right, we will see how it works out at the end of the year."

Q. Mr. Cooper, how was your compensation or fee paid by the Scottish American Investment Company, Ltd.?

A. The Scottish American Investment Company, Ltd. used to send me a check or draft from the other side.

Q. What about the British Trusts?

A. They insisted that I write my own checks and Scottish said all right, we will send you a draft from the other side, and I drew my own on the other two.

Q. Besides the accounting and banking arrangements that you already discussed, what other duties were performed by you or the staff which you installed here?

A. Well, there were quite a few different situations involved. One was the fact that they had found difficulty in keeping themselves posted about the numerous companies in which they had investments. For example, they always had a great deal of difficulty in getting the annual reports or statement issued by these companies in which they had investments, and many times they wouldn't get them until months later, and one of my important jobs was to see they got them more promptly, which meant not only to see that I got them myself, but to see that they went over to the other side.

Another situation was to keep them informed by any developments that may bob up in the newspapers or about any securities, starting off writing weekly reports. Of course, they wanted to be

informed about their own position. I used to send them copies of the deposit slips so that they would have some idea of their United States bank balances.

They were also very interested in getting certain statistical index figures. I think the Federal Reserve Bank and New York Times figures, and they used to get them late, and our job was to cable them over the moment they were released.

Q. How often?

A. Probably two cables a week. We would cable to one of the companies and they would pass it on to the other two. Naturally, there is no sense of three cables all going to the same place.

28 Then another important factor involved these matters of reorganization.

In 1936 and 1937 there were quite a few recapitalizations going on, the companies trying to clear up arrears and preferred shares by some recapitalization, and trying to provide a surplus, or in some cases, merely to cut down the preferred dividend rates, and they would get notices the stockholders were being asked to authorize the issuance of so much bonds, and they never knew what it was.

One of the important things was to check upon all these matters and find out what was what, and not only to get the nominee to sign proxies in favor or against but to let them know so that they would know whether to get active and so on.

They used to work particularly through an association of British investors acting for a number of British companies.

Q. Did you have any authority with respect to proxies, that is to say, did you have authority to have proxies for those soliciting proxies?

A. I had authority to direct the nominee companies to sign the proxies, because the proxies had to be signed by the nominee in whose name the shares were registered. I could not sign them and I would direct the nominee to do that.

Q. What was your practice with regard to communicating with the home office about proxies?

A. If the proxies were for a meeting in which there was nothing special coming up, just an ordinary annual business meeting, I would decide whether or not to issue the proxy or order it on my own responsibility without communicating with the head office at all.

As a rule, I issued the proxy because we found it advantageous to be nice to the managements, and sometimes we would want to ask them for a favor, and they would reciprocate when we wanted something done, and where there was a reorganization or recapitalization involved, I endeavored to get the circumstances and all background over to the stockholders so they would know what

was going on, and if they had any specific instructions to advise and if they did not have anything they wanted me to do, then I decided myself whether the proxy should be issued or not.

Q. Did you have any uncontrolled authority regarding the disposition of stock rights or warrants?

A. Yes; in the case of—I am not sure whether it applied to three companies or the two British Assets Trusts, but with respect to what they called stock rights or dividend shares, I had the responsibility or authority alone to authorize and direct the sale of those rights, or script, which is the term they usually used.

29 In that respect I alone could do it on my own responsibility, without any authority by any officer or director.

Q. What authority did you have with respect to the selection of certificates to be delivered in the case of sales of securities?

A. Well, I used to direct the custodians to deliver specific securities when it seemed necessary, and where they were delivering only part of total holdings. I think in the case of Morgan they made a special point of having been advised by the directors that I had the authority to do that. I think in the case of National City Bank they did not ask for any special authority. They merely accepted my instructions when it was necessary.

We did not do it on every single sale of securities; only on those it was necessary to do it on.

Q. What do you mean "necessary"?

A. For example we had no problem, if the company owned 5,000 shares of stock and they were selling 5,000, likewise if they bought 5,000 and were selling part of it.

Our problem would come up if they were selling different shares at different dates so that we did not know which ones they were selling.

Q. I believe you testified that the coupons on bonds were clipped by the bank custodian and interest collected direct by the bank. Do you know what is the regular practice of bondholders in collecting their coupons; whether foreign or domestic owners?

A. Well, exactly the same thing; they would clip them and give them to the bank for collection. It is just a matter of who cuts them off the certificates. That is all.

Q. Were checks drawn by you of the office here to pay for securities purchased?

A. No checks were ever drawn for securities purchased. You see what would happen, the company would give a broker an order. Usually it would be some broker, of course—on the other side, because they pay cable charges and those brokers would then call their correspondents over here and they would buy their securities and they would be directed to deliver the securities to the bank.

against payment, and if any checks were drawn they were drawn by the bank.

I am not so sure that that was required all the time, because the broker might have an account with that bank and say, credit our account.

In any event, they never draw the checks themselves. There might be an occasion when that might happen, but that wasn't the procedure.

Q. In the case of the sale of securities, were the proceeds of sales received by you, or the office here?

30 A. No; that was worked the exact opposite. The bank or custodian would be directed to deliver to the broker against payment. Usually a flexible payment, because we were never sure of the exact amount of dollars we would have to pay.

Instructions would be, say sell U. S. Steel at 60 to 61, and we wouldn't know whether they would get 60 or 61; or somewhere in between, and the banks would be authorized to deliver U. S. Steel against x-dollars, which would be a few hundred either way.

Q. Are you familiar with the manner in which local investment trusts or domestic investment trusts, usually keep their securities and handle their transactions on sales and purchases?

A. Well, the majority of local investment—

Q. Are you familiar with them?

A. Yes.

Q. Do you know of the operation of any of them?

A. Yes.

Q. How do they handle their securities so far as safekeeping and so far as purchases and sales go?

A. Well, there were several different methods. They all keep them in some nominee's name. They don't keep them in their own names because of the difficulty that it is almost impossible to make delivery in a corporate name, because you have to submit the authority of the board of directors to transfer, and they all use nominees in one way or another. They do a good many things. A great many leave their securities with brokers, the brokers through whom they have purchased the securities. Others deposit them with bank custodians, the same as we did, and leave them with bank custodians.

Probably a few, especially the large ones, may have their own nominee firms, and in that way keep the securities in their own vaults in their own nominee's name, of either an individual or nominee company.

Q. What is the domestic custom regarding payment for securities purchased, or customs, would probably be more correct?

A. Well, they rather vary. In some cases they operate the same as we do, direct the brokers to deliver to the banks or receive from the banks against payments.

In other cases they would keep accounts with brokers and they will merely buy and sell through that broker, and either deposit money with the broker or withdraw according to how the balance works.

Our companies here never had any balances with brokers at all.

Q. Mr. Cooper, going back abroad for a moment, you stated your firm represented quite a large number of British investment trusts. What can you say as to the amount of investments of Scottish American Investment Company, Ltd., as compared with the other largest clients, investment trust clients?

Mr. THOMAS. I did not hear the question.

Mr. FISHER. I will repeat it.

By Mr. FISHER:

Q. What can you say as to the relative size or amount of investments in American securities of Scottish American Investment Trust as compared with the other largest investors among your British investment trust clients?

A. Well, so far as what you might call security investors are concerned, Scottish American had by far the largest amount invested in United States securities. It's probable that a company called the Alliance Trust which has a great deal of farm mortgage investments had more money invested in the United States including these farm mortgages, but Scottish American was by far above the biggest other investor in the United States, and that includes my own clients and other Scottish investment trusts.

I won't elaborate, although it's the biggest client that I know of.

Q. What about British Assets Trust and Second British Assets Trusts as to their relative size?

A. They are in exactly the same position in the sense they were bigger than any other except Alliance and Scottish American.

Q. Were you in the offices of the Scottish American in Edinburgh?

A. Yes.

Q. Did you get any impression as to the size of their office space; the number of their staff?

A. Well, their office was located in a part of Edinburgh that used to be a residential section and it consisted of something like equivalent of our old brownstone houses up in the 40's, and so on.

There were two such buildings in that they knocked the walls out and that constituted their office, and I think it was at one, two, three—1, 2, 3 George Street. I should say it was an awful cut-up affair, with rooms in the middle that had no light in them. I think probably they had a dozen rooms.

You can get a good idea if we visualize two or three of these Washington Square buildings with the walls knocked out.

Q. Did you visit the offices of the British Assets Trust and the Second British Assets Trusts?

A. Yes.

Q. What can you say about the size of the space occupied there?

A. That is a little bit more difficult because they had a secretary who was really a firm acting as a secretary, called

32 Ivory & Syme, and Ivory & Syme were carrying on any other business they wanted to, right in the same premises by the place that represented their office, and Ivory & Syme's office was another residential building, probably a little bit larger than any one of the two buildings that made up the Scottish office, but it was only one building, so that as a whole, the office was smaller than the Scottish office. But how much work was done there in addition to the work of the British Assets Trust, I don't know.

Q. Would you be able to state, approximately, the number of persons employed by Scottish American in this office you saw?

Mr. THOMAS. I don't believe the witness is qualified.

Mr. FISHER. I asked him if he would be able to state the number.

The WITNESS. Yes, within a spread of maybe four or five.

By Mr. FISHER:

Q. Will you state?

A. I should say the Scottish, they probably had about 15.

Mr. FISHER. That is all.

Cross-examination by Mr. THOMAS:

Q. Mr. Cooper, each of the petitioner companies, did they have what is known as a board of directors over in Edinburgh, did they not?

A. That is right.

Q. I believe you stated that the principal purpose of these petitioners was to keep funds invested consistent with safety?

A. Their entire purpose; right.

Q. To provide a return to their shareholders and of course their bondholders?

A. Yes, sir.

Q. Matters of policy as to those matters were handled by the board of directors in Edinburgh; isn't that correct?

A. That is right. You see, it had to be, because they are only concerned with Sterling and I couldn't get the Sterling picture on this side.

It might be a desirable thing to buy securities from the point of view from the United States residents and the wrong thing to do from the point of view from the fellow who has to take it over in Sterling.

They decided all their policies over there.

Q. Wouldn't you say, Mr. Cooper, that except for our own Federal income tax laws, no office would have been set up here for any of the petitioners?

A. On the contrary, it was seriously discussed before we even thought of income tax laws. The income tax laws raised the question because they had not paid their taxes, and it cost them more than if they had an office.

They had some years before an office. What finally convinced the directors, is a matter that is in their minds, and I don't know—

Q. Just previous to the setting up of the office there had been considerable discussion over our own Federal taxes; had there not?

A. It was the fact that they had failed to pay the tax when they should have had, and they had to pay a lot of interest because of the delay.

Q. And when you went over there, you went over with Mr. Breeding, I think it was in September?

A. Yes, sir.

Q. You discussed with them the provisions of the Revenue Act of 1936?

A. That was discussed with all our clients over there. After all, these folks just found out about United States taxes and all of a sudden it turned upside down again, and they don't know anything about it.

Q. I don't know whether I exactly understood your testimony as to why the nominees were changed in December, 1936. Did I understand you to say that was because one nominee—you could have one nominee for all the securities of each of the petitioners?

A. That is right.

Q. Who would not be a nominee for any other company?

A. That is right.

Q. Now, these nominees, after change, were still employees or associated in some way with J. P. Morgan?

A. The nominees were partnerships, consisting of partners or employees of the bankers who made up the partnerships.

Q. I suppose prior to that change, any nominee for Scottish American might also be a nominee for other companies, and the dividend checks might come in that way, and it would cover the stock list for both companies, and the dividend would have to be split-up?

A. That would happen if the bank would receive a dividend of X dollars, and they would credit it to the owners of the stock listed in that nominee's name.

Q. Mr. Cooper, you stated a while ago that you rented space for these companies in somewhat of a rush or hurry?

A. Well, because they said open the office on the 2nd of December by cable and this meant going out and get office space. It happened that December is a very busy time for a public accountant and I could not hop around and make the best arrangements anyway. I had to get started.

34 Q. Why were they so anxious to open it up December 2nd rather than January 1st?

A. I think they were conscious of the facts that if they opened in December, the new basis would apply to 1936, and we knew for 1936 they would probably pay less taxes as a resident, and I was very careful to tell them in 1937, it might be the exact opposite, so they knew they would save some tax in 1936.

Q. Along about the end of 1936, and the early part of 1937, there was correspondence passed between you and the office in Edinburgh with respect to whether you should get a ruling from the Treasury Department or whether you had complied as a resident corporation?

A. I think we had some with the Treasury Department. It was with respect to these various companies who were paying us the dividends and we called their attention to the fact that we were a resident foreign company and they should not withhold the tax because there was a foreign company name to the check, and we called their attention to the fact that was being paid to a New York office, and they should not withhold. I don't think we had any correspondence with the folks on the other side, but we sent them copies of all our correspondence.

Q. Was that true with regard to all these resident corporations over here?

A. No; because many of them did not withhold the tax in the first place. Only those that withheld the tax that we had to take it up with them.

Q. Didn't it take a matter of two or three weeks to get these nominees changed?

A. No; once it was decided, that was done in a day or two.

Q. But the corporation paying the dividend would have to know the change?

A. At that time they were making transfers in two or three days at the outside.

Q. Didn't quite a number of the checks for dividends that were paid in December, didn't quite a number of them get to the bank direct?

A. Yes; because you see, a corporation will pay a dividend December 28th to stock of record of December 5th. We might not get our shares transferred until December 6th, but the dividend would go to the record owner of December 5th, so that is why many dividends, especially December 15th would go to the bank because we did not get the nominee changed, and the mandate in, before December 15th.

Q. Mr. Cooper, tell me this, if you can—when the dividend checks started to be mailed to your office over here, you, as
35 I understand, would have them endorsed and stamp them and deposit them in the bank?

A. I was authorized to endorse checks to deposit, and our bank deposit here is not as strict as it is on the other side.

Q. Do you know what difference that would make with respect to the bank's duties in receiving the funds; the checks?

A. You mean the fact of putting a rubber stamp on?

Q. Well, would it change the actual work or duties of the bank any? As I understand it, the original checks came to the bank?

A. In the first place, the bank had no responsibility to see that we got our dividends. We had to do that ourselves.

In the second place, the bank did not have to take the check and find out who owned the stock and who was entitled to the proceeds and make the proper entries.

Q. Each of the two banks, J. P. Morgan and National City Bank still continued to make the same charge for their services beginning in December 1936 as they did before?

A. No, sir.

Q. Wasn't their method of charging before and after the same?

A. In the case of National City Bank, they used to charge a custodian fee. They called it an activity fee. They also used to charge an income-collection fee, which was a percentage of the income. After we took over the collection of the income they charged only the custodian or activity fee, and they charged no fee for collecting income. That is National City Bank.

In the case of J. P. Morgan & Company, they were then, as I understood it, in the process of changing their method of charging for these custodian services. You may recall that all the banks were trying to raise their charges for all these services matters, and in the case of the British Assets Trusts they had put them on the basis of charging for custodian services.

In the case of the Scottish American they had been making no custodian charge as such. They would merely charge them a percentage of the income collected.

It so worked out that a percentage of the income collected involved less cost to the companies than if they had paid on a basis of custodianship which involved a percentage of the value of the securities for holding them, so they made an arrangement then to continue the usual charge which was less than we would have paid if they put it on the regular custodianship basis.

Q. With respect to the National City Bank, you say they, beginning with December 1936, cut out that charge based on the income of collection?

A. That is right.

Q. What was the other charge they made?

36 A. I think they called it an activity fee; for taking the securities in and taking them out.

Q. And that was on a certain percentage of the value of the securities or the par value?

A. I think it was a flat fee; so much per share.

Q. You mean so much per share for handling?

A. So much per share of stock.

Q. Was that rate increased when the other charge was dropped?

A. No; same rate.

Q. Well, now, J. P. Morgan & Company, that is with respect to Scottish American Investment Company, and their account with British Assets Trust, didn't they continue to charge one-fourth of one percent of the income for collection?

A. I think that is true on Scottish American. I don't recall the rate, but there was a percentage of income deposited, not income collected, but in the case of British Assets Trust there was no charge based on income at all. It was based, I think, on the value of securities.

Q. But that wasn't changed, in connection with the British Assets Trust, the charge for handling securities, wasn't changed, was it, in December 1936, or about that time?

A. Well, I don't know whether they changed the rate. The method was exactly the same. The rate would have been changed, and I wouldn't remember.

The MEMBER. We will recess for five minutes. (Recess.)

By Mr. THOMAS:

Q. Mr. Cooper, as far as purchases and sales of securities through brokers in this country, the method wasn't any different after 1936 then it was before?

A. Not that it was immediately so.

Q: That is what I mean. In the early part of 1936 and 1935?

A. Right.

Q. In other words, there was no change in that method by the setting up of the office over here?

A. Most of the orders still went through brokers on the other side.

Q. In other words, it was the directors of each company over there that decided what to buy and what to sell?

A. Exactly.

Q. And your advice would sometimes be sought on what certificate would be best to sell for tax purposes?

A. It went further than just what certificates. Sometimes they want to know what the effect of the change of the securities were, and they might have influenced their purchase or sale. There was change about the brokers. That was after the office was
37 open, all brokerage advice went to us rather than over on the other side.

Q. You mean they sent copies of statements to you?

A. They sent them to us; not the copies.

Q. Wouldn't you say, Mr. Cooper, that practically all of the work done by your office over here was confined to the recording and handling of dividend checks, and the recording of the securities owned and changes from time to time in securities owned?

A. And receiving the dividend and interest items. That was the main thing, and seeing that we got everything we were entitled to.

Q. That constituted most of the physical work done in the office?

A. That is right.

Q. Well, now, as far the actual funds of the petitioner are concerned, would you say that what your office did over here was receive dividend checks and pay organization and administration expenses, incidental to the receipt of the dividends?

A. And taxes.

Q. What is that?

A. And taxes.

Q. Of course, this office over here had nothing to do with making distributions to the stockholders of petitioner corporations?

A. No.

Q. And nothing to do with payment to petitioners' bondholders?

A. No.

Q. And as a matter of fact, the stockholders and bondholders of the petitioners were nearly all foreign citizens, were they not?

A. Outside of the United States?

Q. Yes.

A. Yes; there were some over here and we were used to send those who were over here all our statements as they were issued.

Q. Was a large part of the stocks or bonds of these three petitioners owned by insurance companies over in England or Scotland?

A. I know that insurance companies were big holders. I don't know enough about the exact amounts to say a large part.

Q. Do you know how much of the stock interest in Second British Assets Trusts was owned by British Assets Trust?

A. I think it was a little over fifty percent.

Q. This was the stock—

A. Ordinary shares, probably none of the so-called preferred shares or debentures.

38 Q. Would you say that this statement is correct, Mr. Cooper, that management of the petitioners' affairs is largely in the board of directors operating from the company's head office in Edinburgh, Scotland?

Mr. FISHER. I object, Your Honor; it seems to me that calls for a conclusion. It is entirely argumentative what the position of the board of directors is. This witness is no more competent to answer that than your Honor is by his own observation.

The MEMBER. I will overrule the objection.

The WITNESS. Will you repeat that question again?

Q. Would you say that this statement is correct, Mr. Cooper: management of the petitioners' affairs was largely in the board of directors operating from the company's head office in Edinburgh, Scotland?

A. It is all right if you say largely in the board of directors, because I hate to say where they are operating from. They may operate from wherever they happen to be, because they are merely part-time engagements on these companies. They really had other jobs.

Q. I know, but a board of directors, that is the board of directors of each of these petitioners, you wouldn't compare them exactly to a board of directors of one of our own domestic corporations, would you?

A. In one respect they are quite similar, and in another respect they are not. They are not like our boards in the sense that they take a closer interest in actual operations. They are somewhat like our boards in that they meet periodically, and that is the only time they have to do with these companies, except they are thinking about them all the time.

Q. I show you a letter directed to Mr. C. R. Krigbaum, Internal Revenue Agent in Charge 90 Church Street, New York, dated April 14, 1939. That is your signature, is it not?

A. Right.

Q. On page 2, paragraph 2, about the middle of the paragraph, will you read what you have stated with respect to what it is?

A. "The directors of these companies are very active, meeting weekly or more frequently as may be required, and the purchase or sale of securities can only be ordered by action of the Board, no individual having general authority to make such transactions."

Q. Those statements are correct?

A. They are correct, but I am not sure that all through the period they met that frequently.

Q. But they met frequently?

A. They met officially twice a month, and as often in addition to that as circumstances required.

39 Q. Just what does the firm of secretaries do?

A. The same thing as I do. The securities are in the custodian account, with the bank, and they record the income and they do distribute the payments to shareholders, which I did not do or know anything about.

Q. At 120 Broadway, Mr. Cooper, wasn't the telephone number of these three petitioners the same as the telephone number of Barrow, Wade, Guthrie & Company?

A. I think what we did was to put a special number on their wire, but I insisted on it being hooked up with our board. I didn't want to keep running down to the 26th floor. I was on the 27th so that I insisted on hooking it through our board, so that our operator could get me.

Q. Wouldn't it be listed in the telephone book under the same number?

A. No, I am not sure, but I don't know how it was done. That can be verified by the book.

Q. Well, now, I believe you had authority to write the checks up to the extent of \$5,000 per month?

A. That is right.

Q. As a matter of fact, the actual checks that were written were much less?

A. One month it ran over and I had to get special authority.

Q. But it didn't run \$60,000 a year?

A. No.

Q. So that in general you wrote much less than \$5,000 worth of checks a month?

A. Yes; I should say on the average. It varied according to the circumstances and conditions and what had to be paid each month.

Q. And most of those checks were for quite small amounts?

A. Well, if you take it from the point of view of the number of checks that would be a correct statement, if you take it in the point of view of dollars, why, the biggest amount was paid in the larger checks.

Q. You would say, would you not, that most of the securities owned by the petitioners were of a stable class of securities as distinguished from speculative classes?

A. Oh, yes, except some that became speculative after the passed dividends, like some of the preferred stocks that were stable at one time, and then ceased to be.

Q. The object was to invest money in stable stocks?

A. Absolutely.

Q. I believe you stated that you had been with Barrow, Wade, Guthrie & Company for some years prior to 1936?

A. Yes.

40 Q. I believe you said you were an employee for a number of years, say, up to 1926 or 1927. Did you do accounting work in those years?

A. Oh, yes; I was a certified public accountant and have been since 1924, I guess, and prior to that I was doing accounting work, but I wasn't a certified public accountant.

Q. And your association with Barrow, Wade, Guthrie & Company then is as an accountant and expert along that line?

A. Yes.

Q. And you have never been connected with investment companies, have you, in any official capacity?

A. No.

Q. You have never been investment counsel, have you?

A. No; except in one respect that I did a good deal of work on valuation of securities which is something along the same line of investment work.

Q. How about the ownership certificates that have to be filed with the Federal Government, who prepared those, do you know?

A. Ownership certificates; you are referring to bonds or stocks?

Q. I have a bunch of ownership certificates in my file, that have J. P. Morgan printed on the back of it. I want to know did you make those out?

A. I don't know that any were necessary except possibly with respect to some bonds, and of course in 1936 they would be all in the period prior to the time we had the office.

Q. For any of these years, did your office make out any?

A. I think a few on bonds, but none on stocks, so far as I know.

Q. Your authority to act for petitioners over in this country was contained in a resolution of each of the companies, appointing you as assistant secretary and giving you certain powers; is that correct? In other words, that is your authority for acting?

A. I think that is a correct statement. Of course, there is a number of things that aren't covered specifically. I think you really should say that those are matters on which action of the board is required to grant authority, such as the signing of checks and things like that.

Q. Well, now, prior to the time you acted over here in this country, weren't the petitioners getting financial reports and financial magazines and things of that kind; Standard Statistics, for instance?

A. The public services they were getting, some of them, but the financial reports of the company in which they owned securities, they were not getting a great many of them, and those they got, they usually received much too late to do them any good, or at least not as rapidly as they wanted them.

41 Q. I show you, Mr. Cooper, a copy of a letter sent to you dated December 9, 1936, by the Scottish American Investment Company, Ltd., and signed by J. R. McLaren, Secretary. Do you remember getting that letter?

A. Yes.

Q. Would you read the letter aloud, please?

A. "As you are no doubt aware it has, up till now, been the practice of Messrs. J. P. Morgan & Co. to charge us commission of 1% on all income collections made by them on our behalf. In future of course, you will be making the income collections, but my Directors wish Messrs. J. P. Morgan & Co. to continue to receive the same commission as in the past. I shall be obliged if you will arrange for this to be done, either by handing Messrs. J. P. Morgan & Co. a cheque at the end of each month, or by paying them each time a lodgment of dividend cheques is made, or by Messrs. J. P. Morgan & Co. debiting our account each time dividend cheques are cleared through them. From our point of view, the actual procedure to be adopted is immaterial, and I shall be glad if you will arrange to follow the method most suitable to Messrs. J. P. Morgan & Co. and yourself."

Mr. THOMAS. I offer this copy of the letter in evidence.

Mr. FISHER. No objection.

The MEMBER. Received.

The CLERK. Respondent's Exhibit A.

By Mr. THOMAS:

Q. I show you, Mr. Cooper, copy of a letter dated December 23, 1936, from the Scottish American Investment Company, Ltd. in Edinburgh—no, this is a copy of a letter from you directed to the Scottish American Investment Company, Ltd., in Edinburgh, dated December 23, 1936. Do you recall that letter?

A. Yes.

Q. Will you please read what you stated—that letter was signed by you?

A. The original was.

Q. Will you please read what you have stated therein, with respect to commissions to J. P. Morgan & Company?

A. (Reading). "I discussed with Mr. Bushnell of J. P. Morgan & Co., the subject-matter of their commissions and have arranged with them to submit to me each month a bill which of course will be for services in maintaining the securities, etc., rather than collecting income, but which will be in an amount sufficient to provide them with the same amount they would have received under the former method. In payment of this monthly bill I will send them a check.

42 "In this connection, however, it should be observed that in the past the $\frac{1}{4}\%$ was applied to the amount collected, and to the extent that tax was deducted the percentage was applied to the net amount. We expect now to receive all collections gross without deduction of tax, although there will be instances from time to time in which taxes will be deducted until we satisfy the paying agents as to our status as resident foreign corporation. Accordingly, we would appreciate your definite instructions as to whether the commission is to be paid on the gross amount which will in fact be collected or on the net amount that would have been collected for your account if the office had not been established."

Q. Mr. Cooper, I have here a copy of another letter addressed to you from J. R. McLaren, Secretary of the Scottish American Investment Company, Ltd., dated February 11, 1937. Is there any mention made in that about commissions or charges for services performed by J. P. Morgan & Co., Inc.?

A. Will you repeat that?

Q. I just asked you if there is anything in that letter relating to commissions to be paid to J. P. Morgan & Company, Inc.?

A. No.

Q. Is reference made in that letter as to how it should be handled?

A. No.

Q. Will you explain what that letter means?

A. This letter is really dealing in the manner where J. P. Morgan used to credit to a collection account after deducting their own commission instead of depositing in a general account. It being a sort of intermediate accounting arrangement there. It really has nothing to do with the payment. It merely says the collections after deduction shall be handled in a certain way.

Mr. THOMAS. I offer that copy of letter in evidence as—

Mr. FISHER. No objection.

The MEMBER. Received.

The CLERK. Respondent's Exhibit D.

(Received in evidence and marked "Respondent's Exhibit D.")

By Mr. THOMAS:

Q. What did you say your authority was as to the giving of proxies?

A. Well, I had authority to direct the nominees to issue proxies to the particular persons who I wanted them to name. Now, this was the way it was ultimately developed. Of course, originally, when the question first arose, there was considerable question about what authority I had. Finally, it was worked out for the two British Assets trusts, they left the thing almost entirely to me. They even did not want me to let them know what it was. In the case of Scottish they wanted me to let them know if it involved reorganizations and matters affecting their shareholders as compared with other shareholders, and then they were to tell me whether a proxy should or should not be issued, and in a few cases where they did not come back, I ordered them issued anyhow.

Q. Here is a copy of a letter dated March 9, 1937, addressed by you to the Scottish American Investment Company, Ltd., in Scotland. The letter is quite lengthy. You have reference in that letter to the sale or exercise of rights and sale of odd shares of stock. Will you please read what you have stated with respect to that subject matter?

A. (Reading.) "Messrs. J. P. Morgan & Co. also feel that they should have your specific authority to accept and follow my instructions when issued with respect to the sale or subscription of rights, sale or delivery of odd shares, etc.

"While in most case you will issue your instructions in respect to these matters direct to Messrs. J. P. Morgan & Co., there may be infrequent occasions when because of the shortness of time, or for other reasons, it will be necessary for instructions to be issued by this office. You will understand, of course, that I will do so only at your direction.

"Will you therefore please authorize Messrs. J. P. Morgan & Co. to accept my instructions in this respect."

Mr. THOMAS. I offer this copy of letter in evidence.

Mr. FISHER. No objection.

The MEMBER. Received.

The CLERK. Respondent's Exhibit E.

(Received in evidence and marked "Respondent's Exhibit E.")

By Mr. THOMAS:

Q. Mr. Cooper, I show you a copy of a letter addressed to you from the Secretary, Mr. McLaren, of the Scottish American In-

vestment Company in Edinburgh, dated March 17, 1937. There is mention made on page 2 of that letter, to certain foreign securities. You don't need to read it out loud, but please read the part relating to those securities. What I want to ask you, Mr. Cooper, is, were some of the foreign securities held and kept by the main office in Edinburgh, Scotland; that is, with respect to the Scottish American Investment Company?

A. Yes; there were certain, not only foreign securities, but I think they had a couple of United States securities.

Q. I show you a copy of a letter dated March 30, 1937, addressed by you to the Scottish American Investment Company, in Edinburgh; on page 3 of that letter you refer to trouble 44 getting the statements from the brokers. I wish you would explain that, please? You might read that paragraph at the top of the page. Read it out loud.

A. Well, that relates to the fact that after I was appointed Assistant Secretary, I notified all the brokers that I had been appointed to that office, and we had our office at 120 Broadway, and I asked them to send all statements to us, that is, statements of purchases and sales.

Well, we went into two difficulties. One was that after many years after sending these confirmations abroad, they still did it, and we also had some difficulties that sometimes the transactions would come from the other side to British brokers who did not indicate that it was for the Scottish American or some of the others, so that the New York brokers did not know that we had anything to do with it, and we eventually got it straightened out all right, but after the first couple of months we still had a little trouble.

Q. I have here, Mr. Cooper, a copy of a form letter that was sent by J. R. McLaren, Secretary of the Scottish American Investment Company, to their New York correspondents, and brokers. Will you please read that letter aloud?

A. This is dated the 2nd of December 1936 [reading]: "We have now established an office at 120 Broadway, New York, and Mr. Walter A. Cooper of Messrs. Barrow, Wade, Guthrie & Co. has been appointed Assistant Secretary of the Company to take charge. We shall be obliged if you will forward to Mr. Cooper copies of all Contract Notes, cash and delivery advices, and statements of account in connection with any transactions which we may have with you on or after today.

"We shall be glad, if you will continue to send the principals of all such documents direct to us as heretofore. All letters in connection with our investments should be sent here as previously, and all instructions regarding transactions will be sent from here."

MR. THOMAS. I offer this letter in evidence.

MR. FISHER. No objection.

The MEMBER. Received.

The CLERK. Respondent's Exhibit F.

(Received in evidence and marked "Respondent's Exhibit F.")

MR. THOMAS. That is all.

Redirect examination by MR. FISHER:

Q. In your earlier cross-examination, did you say that the original advices from brokers or copies of advices from brokers came to the office at 120 Broadway and later Journal Square?

A. I think I said the originals.

45 Q. Is that correct?

A. In cases of the two "Bats," that is what we call them, I think I got the originals, and in the case of Scottish American we got the originals.

Q. You said the two "Bats."

A. I mean the British Assets.

Q. You were shown a voucher for \$13.77 by counsel for respondent, and I ask you if that voucher describes the expenditure for which that was drawn?

A. I wasn't shown the check.

Q. You were shown the check stub?

A. I don't remember that.

Q. Show you a voucher form, and ask you to state what that shows?

A. Well, this is a bill from the Haskell Printing Company, for letterheads and envelopes, and carbon copy sheets.

Q. For how much?

A. \$13.77.

Q. Dated what?

A. 7th of December.

Q. What year?

A. 1936.

Q. Were letterheads gotten for all the companies?

A. Yes; the three of them.

Q. What address did they show?

A. Well, they first showed the address at 120 Broadway, and later 26 Journal Square.

Q. Did you get any letterheads when the office moved to Journal Square?

A. We did.

Q. Mr. Cooper, did these companies make any New York State tax returns?

A. Yes; they filed New York State franchise tax returns.

Q. Did these companies after they moved to New Jersey file any New Jersey State returns?

A. Yes; a State franchise tax, and also qualified to do business in New Jersey, and that involved the filing of certain reports and statements:

Q. Did it require annual reports?

A. That was the actual franchise tax.

LEONHARD A. KEYES, called as a witness on behalf of the Respondent, being first duly sworn, and testified as follows:

46 Direct examination by Mr. THOMAS:

Q. Your name is Leonhard A. Keyes?

A. Yes, sir.

Q. Will you please state your business connection?

A. Vice president of J. P. Morgan & Co., 23 Wall Street, New York.

Q. And how long have you been an official of J. P. Morgan & Co.?

A. Since April 1, 1940, with J. P. Morgan & Co., Inc., a trust company; and from 1903 to April 1, 1940 with the copartnership of J. P. Morgan.

Q. The trust company succeeded to the business of the partnership?

A. It did.

Q. Does J. P. Morgan & Co. handle the custodian accounts for various corporations?

A. Yes, sir.

Q. Are you familiar in general with the handling of those accounts?

A. Yes, sir.

Q. Was J. P. Morgan & Co., during the years 1936 to 1939 inclusively, as well as before and after those years, custodian of securities owned by the Scottish American Investment Co. and British Assets Trust, Ltd.?

A. It was.

Q. Do you know how long they had been custodian for those companies?

A. For the Scottish American Investment Co. since prior to 1903, possible since 1902, and their business agent and so forth for the British Assets, some year or two prior to 1936; I don't recall exactly how long.

Q. Will you state the duties performed by your company, J. P. Morgan & Co., the general duties with respect to the handling of those securities?

A. Of these two companies?

Q. Yes.

A: The general duties at first consisted of our giving their securities the same care and attention and safe keeping that we would give to our own securities, collecting the income, forwarding to the companies the various notices that would come in from corporations in regard to proxies and special meetings, annual reports, and such like that the corporations would give.

Q. Then your duties consisted of collecting the income also?

A. It did; yes.

47 Q. Did your company render financial services in the way of furnishing information about the corporations whose securities you held in custody accounts?

A. Yes, sir.

Q. Did the Scottish American Investment Co., Ltd., and the British Assets Trust, Ltd., ever borrow money from J. P. Morgan & Co.?

A. I think they did; I haven't refreshed my recollection on the facts, but I am reasonably sure that they did borrow from time to time.

Q. Now, I take it then, that the dividend checks for all the years in which you were handling their accounts were deposited to the credit of the Scottish American and the British Assets Trust?

A. On securities that we held?

Q. On securities that you held in custody for them.

A. There was a little difference in the account of the Scottish American.

The normal procedure with all custody accounts is that we could carry the securities in the name of our nominees who would be directed to have the dividends made payable to J. P. Morgan & Co. and they would be collected and when received in the office, they would be credited to the corporation.

Q. The address of the nominees was care of J. P. Morgan & Co.?

A. Always care of J. P. Morgan, and our nominees would give directions to make it payable to J. P. Morgan & Co.

Q. Then, I take it, your company carried an account in which were recorded the collections of dividends from the securities?

A. We did.

Q. And that account continued through 1936 and subsequent years as well as prior thereto?

A. Yes.

Q. Prior to about December of 1936—let me withdraw that.

Prior to about December 1936, would the then nominee endorse the checks for deposit?

A. No. Our practice was that the nominee would always give the dividend order to make it payable to J. P. Morgan & Co. so that no endorsement would be required by the nominee.

The dividend order would be instructions to the obligor corporation to make it directly payable to the firm.

Q. I see. Would you say there was any material change with respect to the duties in handling the income from those dividend checks at or about 1936 as compared with the prior years?

A. Yes; there was quite a change in December 1936.

Q. What was the nature of that change?

48 A. The nature of that change was that we requested to issue the Scottish American and British Assets securities in the name of one particular nominee who did not have any other stock of that particular company for these custody accounts in his name and those nominees were called upon to issue special instructions as such nominees to the paying company to make the checks payable to the Scottish American Investment and forward it to their New York office.

Q. Well, I mean in the form of handling. Of course, the securities were always in the names of nominees, were they not?

A. Yes.

Q. That did not entail any change in the method of handling the actual methods?

A. I call that a change in method.

Q. With respect to the Scottish American Investment Co., Scottish American, Ltd., how are the charges for the services performed by J. P. Morgan & Co. determined?

A. May I refer to a memorandum?

Q. Yes.

A. The charges to the Scottish American Investment Co. consisted of our charging them one-quarter of one percent for the collection of income and on the handling of securities where we were requested to take up the payment, to take up securities against the cash payment or deliver out securities against cash on the amount of the cash involved there would be a charge of one-sixteenth of one percent.

Q. Beginning about the end of November 1936, was any change made in the method of charging for services rendered to the Scottish American?

A. Those rates remained the same.

Q. The method remained the same also?

A. I would say substantially, yes; but there was a bookkeeping difference in the manner of handling it and instead of the Collection Department attending to the receipts and checking the collections and of the dividends, the dividends were all deposited by the Scottish American, and the collection accounts were listed to us that they did consist of dividends and coupon collections.

Q. Well, I would say referring to the actual method of determining the amount due.

A. No; the computation, as to the computation, the method was the same.

Q. Now, in connection with the British Assets Trust, Ltd., will you explain there the basis of the method of charges for services rendered by your company?

A. Well, that charge was our usual charge; the charge that we established some time in 1933, 1934, for the general handling
49 of all custodian accounts. That consisted of an initial charge of \$1 per \$1,000 bonds, and 10 cents per share for stock of the par value of \$100.

With rates computed up to \$500,000 the rate would be one-tenth of one percent, and the second \$500,000 one-fifteenth of one percent and all over a million dollars at one-twentieth of one percent.

Q. Well, is that yearly charge?

A. That is an annual charge.

Q. An annual charge?

A. Yes, sir.

Q. Is that based on the amount of the securities for which you are custodian, or is it based on the amount of transactions in and out of the account?

A. That is based on the amount of securities for which we are custodian.

Q. Did the charges so determined against British Assets Trust, Ltd., include compensation or remuneration to your company for all services rendered in connection with the handling of these securities and the collecting or depositing of the income?

A. That charge included all services.

Q. Was any change made beginning about the end of 1936 in the method of determining the amount of those charges?

A. No, sir; no change.

Q. No change from prior years?

A. No, sir.

Q. No charges were made at any time?

A. I would have to check the date of this British Assets account, it was opened, I think—it was opened after we had established this as a uniform rate against all custodian accounts.

Q. What I mean is from the time you started accounting for the British Assets Trust, Ltd., and the certain method of charging which was established, and there was no change in that method from that time on?

A. No, because their account was opened after this had been established as a uniform charge against all custodian accounts.

Q. In connection with the Scottish American Investment Co., no change was made as between the years prior to 1936 and subsequent to it?

A. No, sir; not for many years prior to 1936. There might have been a change in the early years. I didn't look that up, but I don't think so; these remained.

Q. By that you mean quite some time back?

A. Going back to 1902, when the account was first opened.

Q. Mr. Keyes, when securities were sold by either Scottish American or the British Assets through brokers in
50 this country, do you know what your authority was to deliver the particular series to the broker?

A. After 1936 our authority consisted of instructions that we usually received from the New York office as to what particular series would be delivered. Now, that I know, is particularly true of Scottish American and I suppose the same is true of the British Assets.

Q. If all of a certain stock of a corporation was sold, would you be apt to get any instructions from the New York office?

A. As to what?

Q. As to what series to deliver.

A. Hardly, because there, the whole issue would be going out; you see, the entire stock there would be going out and there would be one delivery against that.

Q. In general, I am including all years. How were you notified to send securities to the broker?

A. We received notice either by telephone or letter from the New York office where they were partial and where there was no notice; we would call up.

Q. That was with respect to a particular series to deliver?

A. That is right.

Q. I am speaking in general of prior to 1936. What would be the method, would you be notified by the broker or by the company?

A. No; by the Scottish American, by the client.

Q. From Edinburgh?

A. From Edinburgh, unless they had opened this New York office where we received most of the instructions from.

Q. Did J. P. Morgan & Co., ever act itself as a broker, as selling or purchasing agent for any of the securities?

A. Yes, sir; prior to April 1, 1919, we were members of the New York Stock Exchange and there would be transactions in which we had been engaged in buy and sell securities, the same as a broker would.

Q. The Scottish American Investment Co., Ltd., and the British Assets Trust, Ltd., had substantial funds, I mean cash funds, on deposit with your company at all times, did they not?

A. Mostly at all times. I think invariably they had a very satisfactory balance.

Q. Do you know approximately what that balance would be?

A. No; I wouldn't know offhand; it would vary.

Q. It might run from \$50,000 up to \$500,000?

A. \$500,000 may be a little large on that, but I would fix it—I would fix the estimate at \$50,000 to \$300,000, but Mr. Thomas, I would like to add that for many days there may be more than that, depending upon what their selling position would be.

31 Q. How were funds which came into the bank either by reason of sales of stock or the deposit of dividend checks, how would those funds be transmitted to the respective companies?

A. Well, they would be credited on our books. We were doing a business as deposit bankers, too, and we would credit this amount for them, and it would be the same as banking the account.

Q. What would happen if they wanted to withdraw?

A. They drew a check on J. P. Morgan, a J. P. Morgan check, the same as they would withdraw from any bank. In addition, they would also from time to time instruct us to take up securities paying cash against them, which would be the same as if they had vouched their money out. That would be on some letter of authority on which we had authority to recognize and accept the signatures.

Q. Would they sometimes send cash drafts in Scotland drawn on their account in your bank?

A. They would issue drafts, I think; yes. Where they were drawn, we couldn't always say.

Mr. THOMAS. That is all.

Cross-examination by Mr. FISHER:

Q. Mr. Keyes, if these companies were to transfer dollars—were to transfer funds abroad, what process would they use to get the transfers made?

A. May I just ask—

Q. If you don't understand—

A. I don't understand the question because I don't understand whether you are speaking of dollar transfers or whether you are going into the field of foreign exchange.

Q. Did they ever transfer dollars abroad?

A. Yes; I would say they did.

Q. Would that be a usual transaction or unusual?

A. I think it is rather unusual, it didn't happen very often.

Q. Generally, they would transfer it by purchase of sterling with their American dollars, wouldn't they?

A. If they did, we wouldn't know it because then they would merely draw a check on that for the dollars and we wouldn't know what the purpose of the check would be.

Q. I see. Did J. P. Morgan as a member of the Stock Exchange have the privilege of charging brokerage commissions on transactions that they executed for that company?

A. Yes; the regular stock exchange commission.

Q. Did you execute all of the sales and purchases for the Scottish American, let us say in 1935?

A. I don't think we did.

52 Q. Isn't it a fact that they had direct connection with a good many brokers?

A. Yes; I am quite sure they did.

Q. If they gave their purchase or sale order directions to a broker, it merely required J. P. Morgan to take up a purchase against cash payment, making cash payment or delivery for sale against cash received, did J. P. Morgan then receive any commission, brokerage commission on that transaction?

A. No, sir; no brokerage.

Q. You spoke of a new scale of custody rates, or methods of charging. You illustrated it by the British Assets Trust, the way that the charge was on the principal amount of securities in custody or safekeeping.

What method did you have prior to that new method?

A. Prior to that it was largely the custom to charge client, based on the income collections, but somewhere in 1931, 1932, with dividends being passed right and left and the dropping of income, the banks found they were not being adequately compensated and they revised the scale of rates based on the par value in the securities in their vaults which would be a steady and fixed charge regardless of income.

Q. Did J. P. Morgan & Co. derive any other revenue from having the Scottish American custody account, aside from this charge of one-quarter of one percent on income collected?

A. Only to the extent that a bank did consider an account with a substantial cash deposit as a source of revenue in that it used its deposit money for investments.

Q. Did it derive brokerage commissions?

A. No, sir; other than as I have stated where we would execute a purchase and sale order, where, of course, we derived brokerage commission.

Q. Isn't it a fact that quite a few years prior to 1935, for example, a large proportion of your purchase and sale orders were executed by J. P. Morgan and therefore in such early years they derived a good deal larger brokerage income from having this account than they did in later years?

A. In the early years, we got a very substantial part of the brokerage business.

Q. If the Scottish American account had been changed to your new scale of charges in or about 1936, would the revenue that J. P. Morgan derived for services been more or less on that scale than it derived from the old scale of charges?

A. May I take just a minute to make a mental calculation?

Q. It has been proved in this case that their cost of the securities on deposit with J. P. Morgan ranged from \$25,000,000 down to \$20,000,000 or \$21,000,000 during these four years, 1936 to 1939?

A. I was just making a computation. With a rough guess that they had \$15,000,000 with us and it was probably based on \$15,000,000, the rate for that at one-tenth of one percent, which would have been the basic charge scaled down to one-twentieth, would have amounted approximately to \$7,000, so that in all of those years the $\frac{1}{16}$ th and $\frac{1}{4}$ th was less than the new rate would have been.

Q. Even though on \$15,000,000?

A. On \$15,000,000.

Q. After you began to deal with the New York office of the Scottish American and the British Assets Trust, was J. P. Morgan thereafter charged with responsibility of collecting the income on the securities in its custody?

A. No, sir.

Q. What would you say as to interest on bonds held in custody?

A. As to the interest on bonds held in custody, we cut those coupons and collected those.

Q. As a matter of fact, how do bondholders generally collect coupons on bonds?

A. Invariably, they turn them over to the banks to collect.

Q. That is true whether they clip them themselves or whether somebody else clips them?

A. Yes, sir.

Q. Why does a bank have a nominee or nominee company?

A. I think the first answer to that is primarily for convenience of delivering securities, in good deliverable form. The Stock Exchange rules that securities registered in the name of the corporation are not a good delivery and must be transferred first either

to a nominee or the broker so as to avoid the necessity of delay, so that at the time of making those transfers, they are invariably kept in the name of the nominee.

Q. It is what is called in street language "a good delivery name," or "street name?"

A. "A good delivery" is the street language as distinguished from a good transfer. The stock in the name of the corporation is a good transfer when it is accompanied by proper papers, when its certification is required, when a resolution is required; all of which the bank takes the responsibility for by having these stocks in the name of the nominee and having ready on them for delivery when a sale is made.

Q. J. P. Morgan nominee was a nominee for a number of J. P. Morgan custodian clients, was it not?

A. I think these particular nominees were nominees in other companies, but when requested to place—may I myself understand your question?

Q. What is the name of your regular nominee?

A. We have about 40 of them.

Q. Well, the name of one is Shaw & Co.?

A. Shaw & Co. is a so-called nominee partnership consisting of a group of our employees who have formed a partnership for the sole purpose of serving in any nominee capacity the clients of J. P. Morgan & Co.

Q. Are a substantial number of the securities held in custody registered in the name of Shaw & Co.?

A. Yes; but many of our securities are also registered in about 40 different individual nominees.

Q. And checks would come in under instructions of your nominees payable to J. P. Morgan, and would any particular check necessarily be for any one customer of J. P. Morgan?

A. Not necessarily; one check may cover 40 or 50 customers.

Q. Why would that be?

A. We have stock of 40 or 50 accounts, let us say of the stock of U. S. Steel Corporation, standing in the name of one nominee and the Steel Corporation would pay the dividend and it would only issue its one check following the dividend order served upon it by the nominee.

Q. That is the reason, is it not, that it was impractical to get a dividend order or of a mandate with respect to the securities of Scottish American Investment Co. and British Assets Trust addressed to the issuing companies or their paying agents, is it not?

A. I didn't hear you.

(Question repeated by the reporter.)

A. (Continuing.) I am not sure I follow the thread of what you say.

The MEMBER. Will you please restate that, counsel?

Q. Let us withdraw that and start differently.

Q. Why was it deemed necessary to transfer the securities of Scottish American to a special nominee who was not nominee for any other of your customer's securities and the securities of British Assets Trust to another special nominee who was not nominee of the securities of any of your other customers?

A. The necessity is contained in the very fact that he should not have the securities of any other customers registered in his name because then there would be required the issuing of two dividend orders. Many of the companies refused to accept differently filed dividend orders too, so that they found it impractical in that respect.

Q. So it is true, is it not, that the nominee in his name each of each companies' securities were registered were able after that registration to issue directions to the issuing companies or their paying agents, as the case may be, as to the payment of the dividends, the sending of notices, annual reports, and the like, isn't that true?

A. That is true.

Q. You stated that prior to December 1936, J. P. Morgan & Co. sent annual reports abroad.

Weren't you mistaken about the annual reports of the various issuing companies?

A. I am not mistaken; they were sent where requested by the customers. Your particular clients may have not requested, but from about one-third we were informed to send annual reports which we would do.

Q. As to notices of meetings and proxy notices, wasn't it necessary to request from the issuing companies additional copies in order to send them to all of your customers?

A. Always, where we had more than one custodian account to one nominee.

Q. After December 1936, or thereabouts, did J. P. Morgan & Co. send any notices, reports, or proxy notices, to Scottish American Investment Co.?

A. No, sir.

Q. To the British Assets Trust?

A. No, sir.

MR. FISHER. That is all, your Honor.

MR. THOMAS. No further questions.

TAXPAYER'S EXHIBITS

Exhibit 5

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED.

OFFICE, 123, GEORGE STREET,
Edinburgh, 2, 3rd December, 1936.

W. A. COOPER, Esq.,

Assistant Secretary,

*The Scottish American Investment Co. Ltd.,
120 Broadway, New York.*

DEAR SIR: I enclose certified copy of Resolutions passed at a Board Meeting of this Company held on 2nd December 1936, appointing you Assistant Secretary of this Company to take charge of our New York Office and defining your authority to operate on the Company's Bank Account with Messrs. J. P. Morgan & Co.

Your duties will in general consist of looking after the interests of this Company in the United States. As matters of regular routine you will be expected to attend to—

56 (1) the collection and lodgment in the Company's Bank Account of interest, dividends, etc., receivable by the Company;

(2) the payment of all local expenses, etc.;

(3) the keeping of records of all transactions in the United States (to enable this to be done I have arranged for our American Brokers, Bankers, etc., to forward to you particulars of all transactions with this Company);—

(4) the making of periodical reports (usually once a week) by cable and/or letter on economic, political, or other developments in the United States;

(5) the completion and filing of Federal Income Tax and Capital Stock Tax Returns.

You will be expected on instructions from this office—

(1) to represent the Company at Stockholders' and other Meetings;

(2) to obtain and forward statistical and other information, Company Reports, etc.;

(3) to attend to any other matters connected with the Company's business.

My Directors have fixed your salary at the rate of \$5,000 per annum. It is their intention, however, that this figure should be reconsidered and possibly revised in about six months' time. Your salary as stated, includes the cost of clerical assistance, office rent, etc., but it does not include out-of-pocket expenses in-

curring in respect of stationery, postages, cables, travelling, etc., which will be chargeable to this Company.

Yours faithfully,

J. R. McLAREN, *Secretary.*

Exhibit 6

THE SCOTTISH AMERICAN INVESTMENT COMPANY LIMITED

Copy of resolutions passed at Board Meeting held at Edinburgh, 2nd December 1936.

It was resolved—

“to appoint Mr. Walter A. Cooper, Assistant Secretary of the Company;

to instruct the Assistant Secretary to establish and take charge of an office of the Company at 120 Broadway, New York City, U. S. A.;

that the Assistant Secretary's salary be \$5,000 per annum, such remuneration to include the cost of clerical assistance, office rent, etc.;

57 that for the period up to the end of December 1936 the Assistant Secretary's salary be \$1,000 instead of at the rate of \$5,000 per annum;

to authorise the Assistant Secretary to endorse for lodgment in the Company's Bank Account with Messrs. J. P. Morgan & Co. cheques payable to the Company;

to authorise Messrs J. P. Morgan & Co. to honour drafts on the Company's Account signed by any one Director and the Assistant Secretary;

to authorise Messrs. J. P. Morgan & Co. to honour drafts on the Company's Account signed by the Assistant Secretary, provided the total amount of such drafts in any one calendar month shall not exceed \$5,000.”

Certified a true Copy.

For and on behalf of The Scottish American Investment Company Limited,

R. O. PITMAN, *Director.*

KENNETH MURRAY, *Director.*

J. R. McLAREN, *Secretary.*

Exhibit 13

BRITISH ASSETS TRUST LTD.,
9 CHARLOTTE SQUARE, EDINBURGH, 2,

2nd December 1936.

WALTER A. COOPER, Esq.,

Messrs. Barrow, Wade Guthrie & Co.,
120 Broadway, New York.

DEAR SIR: We enclose certified copy of Resolution passed at a Board Meeting of this Company held this date, appointing you Assistant Secretary of this Company to take charge of our New York Office and defining your authority to operate on the Company's Bank Accounts with Messrs. J. P. Morgan & Co. and The National City Bank of New York.

Your duties will in general consist of looking after the interests of this Company in the United States. As matters of regular routine you will be expected to attend to:

- (1) the collection and lodgment in the Company's Bank Account of interest, dividends, etc. receivable by the Company;
- (2) the payment of all local expenses etc.;
- (3) the keeping of records of all transactions in the United States (to enable this to be done we will arrange for our
- 58 American Brokers, Bankers etc. to forward to you particulars of all transactions with this Company);
- (4) reporting periodically (usually once a week, by cable and/or letter on economic, political, or other developments in the United States;
- (5) completing and filing Federal Income Tax and Capital Stock Tax Returns.

You will be expected on instructions from this office—

- (1) to represent the Company at Stockholders' and other Meetings;
- (2) to obtain and forward statistical and other information, Company Reports etc.

At the moment it is, as you will understand, difficult to fix a definite salary to be paid to you, but we suggest that to begin with until 30th June 1937 your salary should be at the rate of \$4,400 per annum. By the end of that time we shall both have had some experience of the amount of work involved, and we should then be able to come to an agreement as regards the annual rate of remuneration. The salary will cover clerical assistance in addition to your own remuneration. Office rent and out-of-pocket expenses incurred in respect of stationery, postages, cables, travelling, etc. will be chargeable to this Company.

For your services etc. during the period from now until the end of this year, we suggest that you should receive \$1,000, but this figure would also be subject to revision.

Yours faithfully,

IVORY & SIME, *Secretaries.*

JSB/H.

P. S.—We shall be obliged if you will draw a cheque monthly to cover the amount of your salary for that period.

I. & S.

Exhibit 14

BRITISH ASSETS TRUST, LIMITED

Certified copy resolution passed at Meeting of the Directors on 2nd December 1936, regarding opening of Office in New York.

It was agreed to open an office in New York, and in connection therewith it was resolved as follows:

1. to appoint Mr. Walter A. Cooper, of Messrs Barrow, Wade, Guthrie & Co., 120 Broadway, New York, Assistant Secretary of the Company;

2. to instruct the Assistant Secretary to establish and take charge of an office of the Company at 120 Broadway, New York City, U. S. A.;

3. that the Assistant Secretary's salary be \$5,000 per annum, such remuneration to include the cost of clerical assistance, office rent, etc.;

4. that for the period up to the end of December 1936 the Assistant Secretary's salary be \$1,000 instead of at the rate of \$5,000 per annum.

With regard to the Company's Banking arrangements, it was resolved—

1. to authorise the Assistant Secretary to endorse for lodgment in the Company's Bank Account with Messrs. J. P. Morgan & Co., or The National City Bank of New York, cheques payable to the Company;

2. to authorise Messrs. J. P. Morgan & Co. to honour drafts on the Company's Account signed by any one Director and the Assistant Secretary;

3. to authorise Messrs. J. P. Morgan & Co., to honour drafts on the Company's Account signed by the Assistant Secretary, pro-

vided the total amount of such drafts in any one calendar month shall not exceed \$5,000.

The above certified as a true excerpt

A. W. ROBERTSON DURHAM,

Chairman.

Exhibit 20

SECOND BRITISH ASSETS TRUST LTD.

9 CHARLOTTE SQUARE,

Edinburgh, 2. 2nd December 1936.

WALTER A. COOPER, Esq.,

(Messrs. BARTOW, Wade, Guthrie & Co.),

120 Broadway, New York.

DEAR SIR: We enclose certified copy of Resolution passed at a Board Meeting of this Company held this date, appointing you Assistant Secretary of this Company to take charge of our New York Office and defining your authority to operate on the Company's Bank Account with The National City Bank of New York.

Your duties will in general consist of looking after the interests of this Company in the United States. As matters of regular routine you will be expected to attend to:

(1) the collection and lodgment in the Company's Bank Account of interest, dividends/etc. receivable by the Company;

60 (2) the payment of all local expenses, etc.;

(3) the keeping of records of all transactions in the United States (to enable this to be done we will arrange with our American Brokers, Bankers/etc. to forward to you particulars of all transactions with this Company);

(4) reporting periodically (usually once a week) by cable and/or letter on economic, political, or other developments in the United States;

(5) completing and filing Federal Income Tax and Capital Stock Tax Returns.

You will be expected on instructions from this office

(1) to represent the Company at Stockholders' and other Meetings;

(2) to obtain and forward statistical and other information, Company Reports, etc.

At the moment it is, as you will understand, difficult to fix a definite salary to be paid to you, but we suggest that to begin with until 30 June 1937 your salary should be at the rate of \$1,900 per annum. By the end of that time, we shall both have had some experience of the amount of work involved, and we should then be able to come to an agreement as regards an annual rate of remunerations. The salary will cover clerical assistance in addition to your own remuneration. Office rent and out-of-pocket expenses incurred in respect to stationery, postages, cables, travelling etc., will be chargeable to this Company.

For your services etc. during the period from now until the end of this year, we suggest that you should receive \$500, but this figure would also be subject to revision.

Yours faithfully,

IVORY & SIME, Secretaries.

JSB/H.

P. S.—We shall be obliged if you will draw a cheque monthly to cover the amount of your salary for that period.

I. & S.

Exhibit 21

SECOND BRITISH ASSETS TRUST LIMITED

Certified copy resolution passed at Meeting of the Directors on 2nd December 1936, regarding opening of Office in New York.

It was agreed to open an Office in New York, and in connection therewith it was resolved as follows:

61. 1. to appoint Mr. Walter A. Cooper, of Messrs. Barrow, Wade, Guthrie & Co., 120 Broadway, New York, Assistant Secretary of the Company;

2. to instruct the Assistant Secretary to establish and take charge of an office of the Company at 120 Broadway, New York City, U. S. A.;

3. that the Assistant Secretary's salary be \$2,500 per annum, such remuneration to include the cost of clerical assistance, office, rent etc.;

that for the period up to the end of December 1936 the Assistant Secretary's salary be \$500 instead of at the rate of \$2,500 per annum;

With regard to the Company's Banking arrangements, it was resolved—

1. to authorise the Assistant Secretary to endorse for lodgment in the Company's Bank Account with The National City Bank of New York, cheques payable to the Company;

2. to authorise The National City Bank of New York to honour drafts on the Company's Account signed by any one Director and the Assistant Secretary;

3. to authorise The National City Bank of New York to honour drafts on the Company's Account signed by the Assistant Secretary, provided the total amount of such drafts in any one calendar month shall not exceed \$5,000.

The above certified as a true excerpt.

A. W. ROBERTSON DUEHAM,
Chairman.

COMMISSIONER'S EXHIBITS

Exhibit C

[Copy]

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

American Office: 120 Broadway, New York City, N. Y. 123
George Street, Edinburgh, 2. Cable Address: "Faithful, Edinburgh."

22ND JANUARY 1937.

W. A. COOPER, Esq.,

Assistant Secretary,

*The Scottish American Investment Co., Ltd.,
120 Broadway, New York.*

DEAR SIR, I thank you for your letter of 12th instant. I note from the copy of your letter to Messrs. J. P. Morgan & Co., dated January 12, 1937, that you are taking up with Morgans the position of our holding of 655 shares Mainland Co. which they were under the impression, were worthless.

I note what you say regarding the obtaining of a ruling on the status of the office. I agree with you that a definite request to the Treasury for a ruling as to our status might be regarded as an indication that we are doubtful regarding our status. If the Treasury is prepared to release withholding agents from their requirements to withhold tax on any dividends paid to this company since January 1, 1936, merely on the basis of a statement from your office to the effect that the company is a resident foreign corporation, then there is really nothing to be gained by obtaining a ruling now, and I agree with you that perhaps the best way is for you to lodge our Income Tax Return on the basis

of a resident foreign corporation so that the matter will be dealt with in the normal way by the Treasury. In order to enable you to complete and file our Tax Return, I shall forward you the details which you requested as soon as I have them available.

I note what you say regarding your proposed accounting system, and I thank you for forwarding draft ruling for the cash receipts and disbursements statements. Your proposals seem satisfactory from our point of view, and the cash statements which you propose forwarding will fit in very nicely with our system here.

On December 23 last you wrote to us regarding the transfer to J. P. Morgan & Co.'s Nominee of shares held in the names of Directors. We have now considered this question and it has been decided to transfer the following securities to Morgan's Nominee:

Shares

- 1,000 Colorado & Southern 1st Pref.
- 500 Colorado & Southern 2nd Pref.
- 1,500 Kansas City Southern Pref.
- 2,500 Southern Pacific
- 500 Central States Elec. Pref.
- 805 Assoc. Dry Goods 1st Pref.
- 400 Assoc. Dry Goods 2nd Pref.
- 2,000 Great Northern Iron-Ore Properties.

I have today written to Messrs J. P. Morgan & Co. asking them to attend to the transfer of these Stocks. Perhaps you might have a word with them regarding the possibility of reducing the cost in taxes involved in the transfers.

Yours faithfully,

(Signed) J. R. McLAREN,

Secretary.

63

Exhibit D

THE SCOTTISH-AMERICAN INVESTMENT COMPANY, LIMITED

American Office: 120 Broadway, New York City, N. Y. 123 George Street, Edinburgh 2. Cable Address: "Faithful, Edinburgh."

11TH FEBRUARY 1937.

W. A. COOPER, Esq.

Assistant Secretary.

The Scottish American Investment Co., Ltd.,

120 Broadway, New York.

DEAR SIR, We have today received from Morgans a copy of our General Account dated January 30, 1937 and a copy of our Collec-

tion Account of the same date. These appear to be in order except that there is a balance of \$5,459.88 at the credit of the Collection Account. Before we opened our New York office, and had the dividends paid to you there, our Collection Account was really in effect a statement of all income received by Morgans on our behalf, each dividend being credited to the Collection Account, and the total, after deduction of the $\frac{1}{4}\%$ commission, we immediately credited to the General Account, and the Collection Account did not at any time show any balance. Now Morgans are using the Collection Account to record the receipt of dividends by them where the mandates have not yet come into operation, and the corresponding payments to you. By this system the Collection Account therefore consists merely of cross entries and this method seems to be quite satisfactory.

Morgans however, as you are no doubt aware, collect all coupons on various Bonds direct, the amounts of these not being passed through your office. The Collection Account for January has been credited with the proceeds of coupons cashed, totalling \$5,459.00; an odd amount of 88 cents has also been credited to the Collection Account in respect of an adjustment to the dividend on our Revere Copper & Brass \$7 Preferred Stock. The balance of \$5,459.88 should of course be transferred to the credit of our General Account, and we shall be obliged if you will take up this matter with Morgans, and arrange that any items credited to our Collection Account and not paid over to you should always be automatically transferred to the General Account.

Yours faithfully,

(Signed) J. R. McLAREN,
Secretary.

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Exhibit E

[Copy]

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

MARCH 9, 1937.

Via "Queen Mary."

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
123 George Street, Edinburgh, 2, Scotland.

DEAR SIR: Receipt is acknowledged of your letter dated 23rd February and your three letters dated 26th February 1937.

With respect to the collections of the 20th and 21st January, aggregating \$3,050.00 referred to in your letter of 23rd February, you will find the details reported with my letter of the 22nd January covering the collections from the period of the 20th to

the 22nd of January. The \$750.00 represents dividend on 500 shares Northern States Power Company 6% preferred stock and the item of \$2 300.00 represents dividend collected on 2,000 shares of capital stock of H. L. Greene Company, Inc.

New Deposit Slips.—This weekly report inaugurates the use of the new deposit slip forms which we have finally obtained from your bankers. By using this form we will be able to enter on the deposit slip, a copy of which will be sent to you, all the necessary data explaining the nature of the deposit so that it will be unnecessary to send you with each report a separate typewritten list of the income collected.

Cash Sheets.—I have also had the cash sheets completed starting with the date of organization of this office and enclose the duplicate copies herewith. You will observe that these are closed as of the 31st of each month.

In connection with the statement of receipts for the month of December, you will observe a slight difference in the amount of tax deductions and commission deductions from security sales from the amounts reported in the typed statements previously sent you. This difference results from the fact that the deductions from proceeds made in connection with the requirements of the Securities Exchange Commission have been reflected in the statements herewith enclosed as commissions, whereas they were previously included with the tax deductions.

Cost of Securities for Tax Purposes

In connection with our work compiling a statement of the cost of American securities upon which we are now engaged, we find that the record of securities held by J. P. Morgan & Co. as of December 31, 1936 does not agree in several respects with the list of securities owned as of November 30, sent to this office by you. Some of these differences are accounted for by transactions between the two dates, but after proper reconciliation is made, for those items, we still face a number of differences. These are all set forth in detail in the attached statement headed "Differences between security lists of head office and J. P. Morgan & Co." You will observe that these differences are of three types:

1. Securities held by J. P. Morgan & Co. but not on your list.
2. Securities on your list but not on the list of J. P. Morgan & Co.
3. Securities appearing on both lists but not in the same amount on both lists.

Naturally we must prepare a correct and complete statement before we can make up the necessary statement and open the accounts. You have already been advised of the basis contemplated for keeping the record in our accounts of securities both

U. S. and foreign, and have concurred in my suggestions regarding same. With respect to these differences, therefore, to the extent that you are holding American securities abroad, your advices will explain the reason for the discrepancy and we will record in our account not only the shares held by Morgan, but also those held abroad. In the case of foreign securities, we will record them if they are held by Morgan & Co., and in that connection you should supply us with a statement of the cost thereof. You will observe that your list contains a number of foreign securities not on the Morgan list. If these represent foreign securities held abroad, we will pay no attention to them and not reflect them in our records until such time as they are sent to this country, if that ever happens.

With respect to securities on the Morgan list but not on your list, we have excluded those shares which you have previously advised me were not your property, but were held by Morgan & Co. and by you, in turn, for the account of others.

As soon as these discrepancies are cleared up, we will complete our statements.

66 Information From Messrs. J. P. Morgan & Co. re Securities.

Since we wrote Messrs. J. P. Morgan & Co. under date of February 25, requesting them to send all notices, etc., to us, we have conferred with them on the subject. The dividend mandates they filed directed the paying companies to send us the dividend checks. Most companies, however, require specific mandates to send us annual reports, proxies, notices, etc. in addition to the dividend checks.

Messrs. J. P. Morgan & Co. recognize the desirability of our receiving all these items, but feel they should have your specific instructions to that effect. Will you therefore please write Messrs. J. P. Morgan & Co. instructing them to either send to me all proxies, notices of meetings, annual reports or other communications received by them in respect to securities held for our account, or direct the corporations in which you hold shares to send the same directly to this office. On receipt of such instructions, Messrs. J. P. Morgan & Co. will see to it that we receive all these items.

With respect to execution of proxies, Messrs. J. P. Morgan & Co. would also like to have your specific authority to accept orders from me to have their nominee execute proxies.

Sale or Exercise of Rights and Sale of Odd Shares of Stock

Messrs. J. P. Morgan & Co. also feel that they should have your specific authority to accept and follow my instructions when

issued with respect to the sale or subscription of rights, sale or delivery of odd shares, etc.

While in most cases you will issue your instructions in respect to these matters direct to Messrs. J. P. Morgan & Co., there may be infrequent occasions when because of the shortness of time, or for other reasons, it will be necessary for instructions to be issued by this office. You will understand, of course, that I will do so only at your direction.

Will you therefore please authorize Messrs. J. P. Morgan & Co. to accept my instructions in this respect.

Westinghouse Air Brake Company Common Shares—Special Dividend

I have written to the above company requesting details of the special distribution, as per copy attached.

67 Report to Selected Industries Incorporated

On your advice, with respect to the changed address of the above company, we have readdressed the last annual report and Chairman's speech, to 15 Exchange Place, Jersey City, N. J.

Briggs Manufacturing Company

Attached hereto is a copy of the letter from the Briggs Manufacturing Company dated 10th February with which that company transmitted to us the check for the \$2,000.00 dividend due December 21. I might add, in addition to what is stated in that letter, that the Detroit Trust Company returned the dividend order after it had been filed by Messrs. J. P. Morgan & Co. with the request that it be guaranteed. I arranged with Morgans for that guarantee and the Detroit Trust Company acknowledged receipt of the mandate in satisfactory form on the 6th of January. Apparently, however, they had in the meantime returned the \$2,000.00 check to the Briggs Manufacturing Company and neglected to immediately forward the proper mandate to the company, so that the latter did not send us the dividend check until the 10th February.

Owen's Illinois Glass Company

This will acknowledge receipt of your cable regarding stock in the above company as follows:

"Have instructed Morgan ship London eight hundred Owens Illinois Glass please arrange ship lowest cost shares."

I issued the necessary instructions to Messrs. J. P. Morgan & Co. as you will observe from the copy of my letter annexed hereto with our other correspondence.

Faithfully yours,

Assistant Secretary.

Encs.

WAC: GP.

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Exhibit G

SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

120 Broadway, New York, N. Y.

CORPORATION INCOME TAX RETURN FOR CALENDAR YEAR 1934

LOSSES, YEAR 1934—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or March 1, 1913 value	Loss
National Distillers Common	2,000	1934	\$51,962.50	\$54,839.48	\$2,876.98
Gamewell Common	500	1929	6,531.25	34,587.50	28,056.25
Pacific Coast 1st Pfd	1,000	1902-05		105,500.00	
Pacific Coast 1st Pfd	500	1927-28	18,390.00	24,613.75	111,723.75
Pacific Coast 2d Pfd	1,000	1902-03	8,150.00	75,000.00	66,850.00
United Stores Common	850	1929	11,855.25	21,675.99	96,524.71
United Stores "A"	1,700	1929		86,763.97	
Cuba R. R. 36 Pfd	500	1911	10,993.00	44,315.00	80,572.00
Cuba R. R. 36 Pfd	504	1928	3,438.00	3,474.00	36.00
Remington Rand Prior Pfd	144	1927	12,298.40	15,869.00	3,600.60
Oklahoma Natural Gas Common	1,154-144 (1000)	1933	7,830.00	10,168.92	2,338.92
Life Savers	300	1923	4,069.37	9,727.52	5,718.15
U. S. Leather Part. Pfd. Class "A"	375	1928	40,400.00	155,869.00	115,469.00
Gold Dust Common	3,000				
			175,827.77	689,594.13	513,766.36

PROFIT FROM SALE OF STOCKS AND BONDS—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or March 1, 1913 value	Profit
American Dist. Telegraph 7% Pfd	780	1925	\$90,285.00	\$81,596.00	\$8,689.00
Remington Rand Pfd	300	1935	7,162.50	5,745.66	1,416.84
American Brake Shoe 7% Pfd	330	1934	42,185.00	39,345.00	2,840.00
Hercules Powder Pfd	690	1922	89,687.50	82,823.73	6,863.77
Atchafalpa, Toiyoka & Santa Fe	600	1933-34	60,637.50	41,657.50	18,980.00
Kelsey Hayes Wheel "A"	1,000	1935	24,787.50	22,707.50	2,080.00
Safeway Stores 6% Pfd	250	1934	27,437.50	21,800.00	5,637.50
Allied Stores Common	3,000	1934	25,275.00	21,375.00	3,900.00
Remington Rand Debs	50,000	1936	54,297.50	52,000.00	2,297.50
Reynolds Metals 5 1/4% Pfd	500	1935	55,075.00	56,290.00	4,875.00
Otis Elevator Pfd	500	1933	66,540.00	52,115.00	14,425.00
Public Service of New Jersey 5% Pfd	500	1933	53,375.00	40,225.00	13,150.00
Do	500	1933	53,425.00	42,287.50	11,137.50
Montgomery Ward "A"	1,000	1934	144,987.50	109,830.00	35,157.50
American Chain Pfd	600	1935	74,850.00	55,920.00	18,930.00
U. S. Smelting, Refining & Mining PM	1,000	1922	73,825.00	48,472.00	25,353.00
Maytag 3% Pfd	830	1928	89,745.50	76,722.25	13,023.25
Virginia Elec. Pfd	500	1935	56,412.25	45,500.00	11,412.25
Do	500	1935	56,375.00	51,750.00	4,625.00

CORPORATION INCOME TAX RETURN FOR CALENDAR YEAR 1936—CONT.
PROFIT FROM SALE OF STOCKS AND BONDS—SCHEDULE B—Continued

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or March 1, 1913 value	Profit
69 Firestone Tire & Rubber \$6. Pfd	500	1935	\$52,375.00	\$44,965.00	\$7,410.00
Pacific Lighting \$6. Pfd	1,000	1933	105,312.50	90,375.00	14,937.50
New York, Chicago & St. Louis 4 1/2s	50,000	1935	46,062.50	34,562.50	11,500.00
Shell Union Pfd	1,000	1929	121,850.00	100,825.00	21,025.00
St. Louis County Water \$6. Pfd	550	1935	53,875.00	47,500.00	6,375.00
Mississippi River	500	1932	57,375.00	43,000.00	14,375.00
American Tobacco "B"	500	1933	50,625.00	46,100.00	4,525.00
Bethlehem Steel \$5. Pfd	2,000		37,700.00	28,183.13	9,516.87
Paramount Pictures 1st Pfd	500	1935	41,975.00	38,387.50	3,587.50
Remington Rand Common	6-4/100		135.75		135.75
Do.	600		11,767.70	5,347.03	6,420.67
International Printing Ink 6% Pfd	1,000	1935	109,975.00	107,250.00	2,725.00
Great Western Sugar 7% Pfd	100	1928	14,737.50	11,725.00	3,012.50
Ujiyawa Elec. Power Bonds	50,000	1925	48,878.75	45,000.00	3,878.75
Swift & Co. Common	1,000	1934	22,875.00	18,125.00	4,750.00
American Smelting & Refining 7% Pfd	1,000	1934-35	144,600.00	124,325.00	20,275.00
American Sugar Refining 7% Pfd	300	1928	42,225.00	32,355.00	9,870.00
Peninsular Telephone Pfd	4,050	1923-30	116,487.50	105,735.00	10,752.50
Pacific Gas & Elec. 6% 1st Pfd	2,000	1933	64,025.00	48,750.00	15,275.00
American Bakeries Notes 5%	7,175	1935	5,740.00	5,025.00	715.00
Radio Corp. 3 1/2% 1st Pfd	800	1936	59,060.00	47,010.00	12,050.00
Radio Corp. 3 1/2% 1st Common	1,500	1936	18,575.00	14,260.91	4,314.09
U. S. Smelting Pfd. \$3 1/4	400	1922	28,930.00	19,593.20	9,336.80
U. S. Leather 7% Prior	250		23,700.00	22,147.48	1,552.52
U. S. Smelting, Refining & Mining 7% Pfd	600	1936	43,394.11	29,100.00	14,294.11
Owens Illinois Glass	350		52,705.13	19,955.75	32,749.38
Minneapolis Honeywell Common	1,000 rts		121.25		121.25
New York Steam Pfd	110 shs		31,282.50	11,300.00	20,000.00
Melville's Shoe Corporation	1,500 rts		551.40		551.40
Great Northern R. R.	9,000 rts		10,950.00		10,950.00
Remington Rand	600 rts		70.92		70.92
Phillips Petroleum	2,500 rts		1,643.75		1,643.75
National Dairy Products	1,500 rts		7.50		7.50
Bethlehem Steel Corp.—Gain on exchange			2,000.00		2,000.00
			2,571,453.31	2,104,511.69	466,941.62

Exhibit H

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED.
120 Broadway, New York, N. Y.

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR CALENDAR YEAR 1937
GAINS AND LOSSES ON SALES AND EXCHANGES OF STOCKS AND BONDS—SCHEDULE E

Par of bonds or number of shares	Description	Date acquired	Date of sale or exchange	Gross sales price	Cost	Gain	Loss
\$50,000	U. S. of Brazil—5% funding due 19/1/51	Dec. 1934	May 4-25, 1937	\$40,425.00	\$35,125.00	\$5,300.00	
\$35.24	Province of Buenos Aires—5% arrears etc. from 6% bonds due 3/1/51		Mar. 30, 1937	29.81		29.81	
\$9.00	Province of Buenos Aires—5% arrears etc. from 7% bonds due 4/1/52		Mar. 30, 1937	5.04		5.04	
\$38,000	Province of Cordoba—Ext. 7% due 7/1/42	May & July 1925	May 13-24, 1937	27,000.00	35,752.50		
\$180,000	Imperial Japanese Govt. Ext. S/F 5½% due 5/1/65	Mar., July, Aug. 1934	Oct. 15-29, 1937	102,704.62	141,405.25	1,247.50	\$38,700.63
\$32,000	Oriental Development Co. Ltd. Ext. deb. 5½% due 1948	Mar. & Apr. 1935	Dec. 2-21, 1937	19,061.25	25,070.00		6,008.75
\$30,000	Oriental Development Co. Ltd. Ext. deb. 6% due 1953	Mar. 1935	Oct. 15, 1937	15,787.50	24,037.50		8,250.00
\$23,000	Oriental Development Co. Ltd. Ext. deb. 6% due 1953	Oct. 31, 1937	Nov. 15-18, 1937	14,901.25	23,433.13		7,531.88
\$50,000	Republic of Uruguay—Ext. S/F 6% due 5/1/64	May 1930	Nov. 5, 1937	25,600.00	45,000.00		22,500.00
1,000 sts	Alfa-Chalmers Manufacturing Co.—com	Sept. 1937	Sept. 26, 1937	31.25	31.25	31.25	
2,000 sts	American Rolling Mill Company—com	Sept. 1935	Feb. 18-24, 1937	74,300.00	51,800.00	22,500.00	
600 sts	American Sugar Refining Co.—pfd	Apr. 1928	Jan. 4-15, 1937	55,450.00	64,719.00	20,740.00	
500 sts	Anchor Cap Corp.—common	Mar. 1930	Feb. 17, 1937	10,887.50	25,512.50		14,625.00
200 sts	Anchor Cap Corp.—\$5.50 com w. pfd	Nov. 1928	Feb. 17, 1937	37,000.00	72,360.00		35,360.00
1,000 sts	Armour & Co. of Delaware—7% pfd	Dec. 1934	Feb. 17, 1937	102,200.00	102,200.00		
165 sts	Barker Bros. Corp.—5½% pfd	Feb. 1936	Feb. 17, 1937	100,433.84	102,305.51	7,932.50	
500 sts	Bethlehem Steel Corp.—common	Feb. 1936	Feb. 17, 1937	14,400.00	10,708.83	3,691.17	
2,000 sts	Bethlehem Steel Corp.—\$10.00 com	Feb. 1936	Oct. 1, 1937	3.00		3.00	
71	Brocklyn-Manhattan Trust Corp.—pfd	May 1936	Aug. 25, 1937	28,174.46	61,725.00		33,550.54
25 sts	California Packing Corp.—pfd	May 1936	Apr. 2, 1937	1,265.63	1,262.50	3.13	
400 sts	Champion Paper & Fibre Co.—6% cum. pfd	Feb. 20, 1937	Feb. 20, 1937	44,210.00	40,453.34	3,756.66	
20 sts	Champion Paper & Fibre Co.—6% cum. pfd	Sept. 1935	Feb.-Sept. 1937	1,917.50	2,065.00		147.50
400 sts	Chicago & North Western Railway Co.—com	Jan. 11, 1937	Feb. 11, 1937	3,150.00	78,712.50		75,562.50
1,500 sts	Chicago Pneumatic Tool Co.—common no p.	Aug. 28, Dec. 29	July 2, 1937	38,250.00	30,127.20	8,122.80	
200 sts	Consolidated Edison Co. of N. Y.—\$5 pfd	July 14, 1937	July 14, 1937	19,850.00	20,160.00		290.00
600 sts	General Telephone Corp.—\$3 pfd	Oct. 7, 1937	Oct. 1937	30,600.00	30,600.00		
		Sept. 1935	Mar. 5 & 8, 1937		30,600.00	3,750.00	

GAINS AND LOSSES ON SALES AND EXCHANGES OF STOCKS AND BONDS—SCHEDULE E—Continued

Par of bonds or number of shares		Date acquired	Date of sale or exchange	Gross sales price	Cost	Gain	Loss
2,000 lbs	Gilchrist Company—common	Oct. 1937	Oct. 7, 1937	\$125.00	0	\$125.00	
300 shs	Great Western Sugar Co.—7% pfd	Apr. & Oct. 1928	Mar. & Nov. 1937	75,625.00	\$84,172.50	11,452.50	
150 shs	Grand Central Corp.—5 1/2% pfd	Dec. 29, 1936	Apr. 2, 1937	1,681.25	4,725.00	4,725.00	\$43.75
2,800 shs	Mine Walker Opperham & W. O. Ltd. cum. pref.	1933 & 1935	Mar.-Sept. 1937	55,300.00	47,963.50	7,337.50	
1,000 rts	Inland Steel Company	May 1937	May 28, 1937	656.25	0	656.25	
350 shs	Lehigh Valley Power Co.—\$5 pfd	Dec. 1934	Jan. 22 & Mar. 5, 1937	51,195.00	43,537.50	7,657.50	
6 rts	Montgomery Ward & Co.	Feb. 11, 1937	Feb. 17, 1937	500.00	440.52	7.48	
1,000 rts	New York Central Railroad Co.	Dec. 22, 1934	Jan. 22, 1937	13.88	14.70		
200 shs	New York Steam Corp.—\$7 pfd "A"	Mar. 1937	Apr. 16, 1937	468.75	0	468.75	
200 shs	New York Steam Corp.—\$7 pfd "A"	July & Sept. 1933	Feb. & Apr. 1937	21,850.00	20,693.12	1,156.88	
500 shs	North American Edison Co.—\$6 pfd	July & Sept. 1933	Oct. 7, 1937	30,533.33	37,443.75	12,000.25	59.80
500 shs	Otis Steel Company—common	June & July 1933	Oct. 7, 1937	49,450.00	5,977.00	4,363.00	
600 shs	Owens Illinois Glass Company—common	Dec. 14, 1936	Feb. 17, 1937	42,225.90	19,830.00	22,395.90	
1,000 shs	Racine Corporation of America—\$5.00 cum. conv. 1st pfd.	May 18, 1937	Nov. 3, 1937	78,175.00	58,803.06	19,371.94	
500 shs	Remington Rand, Inc.—\$4.50 cum. pfd w. w. d.	1933-1938	Jan. 19, 20, 1937	45,000.00	31,895.37	13,104.73	
4 rts	Texas Corporation—common	Feb. 15, 1937	Mar. 16, 1937	11.75	0	11.75	
925 shs	Tung-Sol Lamp Works, Inc.—common	Aug. 1935	Mar. 9, 1937	9,243.75	6,544.38	2,699.37	
175 shs	Western Dairies, Inc.—pfd	1928 & 1929	Mar. 9, 1937	6,518.75	13,572.30		7,053.55
500 shs	West Virginia Pulp & Paper Co. Inc. pfd	Dec. 1934	Feb. 8, Mar. 1937	33,025.00	42,500.00	10,475.00	
1,000 shs	Selected Industries, Inc.—\$5.00 prior stk. 2nd	1935	May 1937	60,695.50	75,825.00	20,870.50	
Total				1,363,297.36	1,360,822.21	2,475.15	214,360.72
Net gain							

Exhibit K

BRITISH ASSETS TRUST, LIMITED

120 Broadway, New York, N. Y.

FEDERAL CORPORATION INCOME TAX RETURN FOR CALENDAR YEAR 1936

PROFIT FROM SALE OF STOCKS AND BONDS—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or Mar. 1, 1913 value	Profit
Consolidated Oil Corp. 8% Pfd	1,500	1931	\$105,000.00	\$154,350.00	\$16,850.00
Peninsular Telephone Co. 7%	122	1925	13,424.00	12,444.00	976.00
Maytag Co. \$3 Pfd	2,000	1929	95,275.00	95,137.00	17,438.00
First National Stores Common	525	1925	24,140.00	22,092.00	2,078.00
Kalamazoo Stove Co. Common	28½	1936	1,146.30	570.00	576.30
United Aircraft & Transport Corp. Common Stock purchase warrants	125	1929	2,043.75	125.00	1,918.75
Beatrice Creamery Co. 7% Pfd	1,000	1930	110,000.00	105,725.00	4,275.00
Tri Continental Corp. \$1 Pfd	800	1930	88,000.00	71,690.00	16,310.00
Shell Union Oil Corp. 5% Pfd	2,000	1929-31	249,550.00	168,775.00	80,775.00
General American Transport Co.	2,500 Pfd	1931	748,575.05	613,878.00	134,697.05
National Dairy Products Corp.	2,900	1936	1,795.93	290.00	1,505.93
			290.00		290.00
			750,665.98	613,878.00	136,785.98

LOSS FROM SALE OF STOCKS AND BONDS—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or Mar. 1, 1913 value	Loss
Republic Steel Corp. Common	2,000	1930	\$38,718.40	\$42,475.56	\$3,755.26
Life Saver Common	100	1927-29	4,306.70	8,500.00	4,193.30
Bristol Myers Co.	330	1927-29	13,630.72	34,892.00	21,261.28
United Drug Co.	640	1927-29	7,761.16	33,786.06	26,024.90
United Aircraft Corp. Common	120	1929	2,852.18		
United Airlines Transport Common	30	1929	792.47	11,550.00	10,757.53
Boeing Airplanes Co.	25	1929	590.25		
Vick Chemical Co.	320	1927	14,414.50	28,459.00	14,044.50
Hershey Chocolate Corp. Common	1,300	1930-31	93,422.50	119,738.00	26,315.50
Texas Gulf Sulphur Common	2,000	1930	69,546.50	118,089.00	48,542.50
Commercial Solvents Common	3,000	1931	46,425.00	61,275.00	14,850.00
Gillette Safety Razor Co. Common	600	1928-29	8,925.00	63,245.00	54,320.00
Lehn & Fink Products Common	1,000	1925	16,062.50	44,365.00	28,302.50
Pacific Coast 1st Pfd	300	1924	3,240.00	15,583.00	12,343.00
Canada Dry Ginger Ale Common	4,000	1931	54,954.00	152,675.00	97,721.00
			375,701.88	714,910.56	338,508.68

BRITISH ASSETS TRUST, LTD.

120 Broadway, Room 2620, New York, N. Y.

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR
CALENDAR YEAR 1937

PROFIT FROM SALE OF STOCKS AND BONDS, SCHEDULE E

Description	Number of shares or pair of bonds	Date acquired	Amount realized	Cost or other basis	Profit
Allied Stores Corp. 4½% Debentures	\$1,000.00	1935	\$1,007.50	\$933.12	\$74.38
American Bakeries Corp.—Dividend Note on participating 5½% Stock	\$12,812.50	1935	11,787.90	8,968.75	2,818.75
Allis Chalmers Mfg. Co.—Common rights	1,000	1937	250.00		250.00
American Smelting & Refining Co.—Common rights	1,000	1935	5,355.00		5,375.00
Bethlehem Steel Corp. (Del.)—Common rights	1,000	1937	5.86	0	5.86
Edward G. Budd Mfg. Co.—Common stock	4,000	1936	53,325.00	49,055.70	4,269.30
Continental Illinois Nat'l Bank of Chicago—Common stock	34	1936	58.79	46.50	12.29
General Motors Corp.—Common stock	1,000	1931-35	54,201.90	42,388.75	16,813.15
Hendallie Hershey Corp.—Class "B" Stock	1,000	1935	25,187.50	17,300.00	7,887.50
International Paper & Power Co.—5½% Pfd. Stock	1,000	1937	86,450.00	81,602.33	4,847.67
Common Stock	1,000	1937	31,462.50	27,790.17	3,702.33
Natl Supply Co. of Del.—7½% Pfd. Stock	100	1931	12,475.00	11,069.09	1,475.00
Natl Supply Co. of Del.—7½% Pfd. Stock	100	1931	49,912.50	44,000.00	5,912.50
Phelps Dodge Corp.—Common	1,000	1936	56,650.00	52,965.00	3,685.00
Remington Rand, Inc.—Common rights	1,000	1936	1,000.00		1,000.00
Westinghouse Electric & Mfg. Co.—Common Stock	1,000	1936	50,800.00	44,103.00	6,697.00
			454,949.05	383,108.32	71,840.73

LOSS FROM SALE OF STOCKS AND BONDS, SCHEDULE E

Description	Number of shares or pair of bonds	Date acquired	Amount realized	Cost or other basis	Loss
Great Consolidated Electric Power Co., Ltd. S. F. 7½% Bonds	\$49,500	1935-36	\$33,551.25	\$46,571.88	\$12,020.63
Shinetsu Electric Power Co., Ltd. 1st S. F. 6½% Bonds	\$50,000	1935	27,000.00	43,500.00	16,500.00
American Smelting & Refg. Co. 6½% Cum Pfd. Stock	2,000	1935	210,000.00	222,825.00	12,825.00
American Woolen Co.—Pfd. Stock	300	1934	19,500.00	23,505.00	4,005.00
American Woolen Co.—Pfd. Stock	200	1934	33,000.00	15,670.00	2,670.00
Chesapeake & Ohio Railway Co.—Common Stock	2,000	1930	76,325.00	102,514.10	26,189.10
Chrysler Corp.—Common Stock	1,500	1935-36	81,000.00	148,734.50	67,734.50
Mead Corp.—Common Stock	100	1931	5.00	12.50	7.50
			461,381.25	603,332.98	141,951.73

Exhibit O

SECOND BRITISH ASSETS TRUST, LTD.

120 Broadway, New York, N. Y.

CORPORATION INCOME TAX RETURN FOR CALENDAR YEAR 1936

PROFIT FROM SALE OF STOCKS AND BONDS—SCHEDULE A

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost	Profit
California Electric Generating Co. 6% Pfd.	150	1926	\$15,000.00	\$9,749.49	\$5,250.51
Life Savers Corp.	200	1927-30	5,470.00	7,916.00	551.00
United Drug, Inc.	800	do	9,925.00	7,996.50	1,958.10
Chesapeake & Ohio Rly. Co. Common	2500	1931-32	248,987.50	66,921.54	81,165.96
Vick Chemical Inc. Common	400	1930	17,827.50	36,452.57	1,374.93
Public Service Co. of Colorado 7% Pfd	6	1920	6,640.00		640.00
United Gas & Electric Corp. Pfd	119	1922	11,050.70	6,949.72	4,100.98
Glicklen Co. 7% Cum. Prior Pfd	500	1924	52,500.00	42,889.34	9,610.66
Youngtown Sheet & Tube Co. 5 1/2% Pfd	500	1935	57,575.00	49,445.00	8,130.00
American Telephone & Telegraph Co. Com.	500	1932	92,375.00	54,362.50	38,012.50
Curtis Publishing Co. Com. Pfd	500	1934	51,625.00	34,876.00	16,750.00
Province of Buenos Aires	8360		1.98	1.83	.16
Province of Buenos Aires, 3, 1984	1,000		538.16	470.00	68.16
			462,615.83	294,989.88	167,615.95

LOSS FROM SALE OF STOCKS AND BONDS—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost	Loss
Bristol Myers Co. Common	400	1927-30	\$17,225.50	\$2,405.62	\$4,178.12
Lambert Co.	1,500	1931	30,612.50	143,504.80	112,892.30
Atlas Plywood Corp. Common	2,000	1925	24,215.00	54,497.20	30,282.20
Colgate Palmolive Peet Co.	3,300	1932	43,425.00	123,818.65	79,893.65
Purity Baking Co. Common	1,000	1929	12,137.50	142,427.90	130,290.40
Pacific Mills Co. Common	200	1925	3,337.50	19,499.60	16,161.50
Pacific Coast 2nd Pfd	1,700	1936	8,379.02	88,517.09	80,138.07
International Rly. Co. 5% Bonds 1962	3,000		1,848.33		1,839.04
International Rly. Co. Shares	184	1933	358.80	4,037.17	75.44
Minneapolis Honeywell Regulator Co.	1,200 sts.	1936	149.56	225.00	600.00
National Dairy Products Corp.	4,000 sts.	1936	490.00	2,750.00	251.55
Great Northern Railway	1,000 sts.	1936	2,498.45		
			145,089.16	601,682.43	456,593.27

SECOND BRITISH ASSETS TRUST, LTD.

120 Broadway, Room 2630, New York, N. Y.

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR CALENDAR
YEAR 1937

GAINS FROM SALES AND EXCHANGES OF STOCKS AND BONDS—SCHEDULE E

	Description	Date acquired	Amount realized	Cost	Gain
\$2,050	American Bakeries Corp.—Partic. 5%	10-8-35	\$1,886.09	\$1,435.00	\$451.00
	Dividend Note				
\$9,000	Great Consolidated Electric Power Co., Ltd. 1st Mtg. S. F. "A" 7's	5-21-25	8,212.60	8,063.85	148.75
750 shs	Tidewater Associated Oil Co. Cum. Conv. Pfd.—Cash received on exchange		1,500.00		1,500.00
5,000 rts	American Smelting & Refining Co. Common	1937	26,459.46		26,459.46
60 shs	Caterpillar Tractor Co. 5% Pfd	12-24-36	6,240.09	6,180.00	60.00
750 shs	Gulf States Steel Corp. Common	1936	44,043.05	39,231.13	4,812.62
500 rts	Remington Rand, Inc.	1936	250.00		250.00
2 rts	Texas Corporation—Capital	1937	3.99		3.99
			88,505.80	54,909.98	33,625.82

LOSSES FROM SALES AND EXCHANGES OF STOCKS AND BONDS—SCHEDULE E

	Description	Date	Amount realized	Cost	Loss
\$25,000	Imperial Japanese Gov't. Ext. Loan 1930 S. F. 5 1/2's	1934-35	\$13,760.90	\$20,305.33	\$6,634.43
1,500 shs	Otis Elevator Co. Common	1930	57,462.50	103,450.00	45,987.50
2,500 shs	Socoany Vacuum Oil Co.	2-5-36	41,250.00	41,450.60	200.60
83 shs	United Cigar Stores Common—Class "A" exchanged for United Cigar Whelan Stores Corp.	1928	19.12	2,116.50	2,106.38
			112,393.52	167,322.43	54,128.91

THE SCOTCH-AMERICAN INVESTMENT CO., LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

BRITISH ASSETS TRUST, LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 104249, 104250, 104251, 108440, 108441, 108442

*Findings of fact and opinion**Formulated August 6, 1942*

Petitioners, which are foreign investment corporations with large holdings of United States securities, established an office in this country under the charge of a United States citizen designated an "Assistant Secretary" by each of the petitioners. The United States office maintained original records of all of petitioners' transactions in this country, collected dividends on petitioners' United States securities, and sent periodical reports to the home offices of petitioners. The United States office also investigated proposed reorganizations of corporations in which petitioners owned securities and made recommendations to petitioners with respect thereto. The assistant secretary of petitioners disposed of stock rights and script and designated the specific certificates of securities to be delivered in the case of sale of securities by petitioners. In addition this office prepared petitioners' United States tax returns and generally took care of petitioners' affairs in the United States. *Held*, that petitioners maintained an "office or place of business" within the United States and are resident foreign corporations taxable under section 231 (b) of the Revenue Acts of 1936 and 1938.

Marion N. Fisher, Esq., for the petitioners.*Harold D. Thomas, Esq.*, for the respondent.

The Commissioner determined deficiencies in income tax of the petitioners as follows:

	1936	1937	1938	1939
Scottish American Investment Co., Ltd.	\$63,031.57	\$113,921.68	\$97,740.85	\$69,054.56
British Assets Trust, Ltd.	42,555.98	84,743.68	54,710.09	50,137.41
Second British Assets Trust, Ltd.	20,637.22	37,962.61	28,365.47	25,304.2

Petitioners claim overpayments as follows:

	1936	1939
Scottish American Investment Co., Ltd.	\$38,933.01	
British Assets Trust, Ltd.	26,319.25	\$6,550.44
Second British Assets Trust, Ltd.	19,830.14	2,441.33

The sole question before the Board is whether or not petitioners are resident foreign corporations engaged in trade or business in the United States or having an office or place of business in the United States. The proceedings were consolidated for hearing and opinion.

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Findings of fact

Petitioners are corporations organized under the laws of Great Britain, with their principal offices in Edinburgh, Scotland. Each of the petitioners is an investment trust and is engaged in the business of investing the funds of its security holders for the primary purpose of deriving income from investment. Petitioners' returns for the taxable years 1936 and 1937 were filed with the collector of internal revenue for the district of Maryland; their returns for the years 1938 and 1939 were filed with the collector at Newark, New Jersey.

Each of petitioners has large sums invested in securities in the United States. On December 2, 1936, petitioners had the following amounts invested in United States securities:

Scottish American Investment Co., Ltd. (hereinafter referred to as Scottish)	\$24,452,752.79
British Assets Trust, Ltd. (hereinafter referred to, as British)	14,974,359.67
Second British Assets Trust, Ltd. (hereinafter referred to as Second British)	8,457,000.00

The investment of British in United States securities represented over 30 percent of its total investment. The investment of Second British in the United States was in excess of 40 percent of its total investment. The relative investment of Scottish in the United States was proportionately larger than that of the other two petitioners. During the taxable years each of petitioners owned a large number of different United States securities.

Each of petitioners had a board of directors, which met frequently at its home office in Edinburgh. British and Second British were managed, as is customary for investment trusts in England and Scotland, by a firm of secretaries engaged in the business of management.

For some years prior to 1936 Scottish had realized profits in the sales of securities in the United States and had failed to file Federal income tax returns reporting the profit thereon. British companies, such as petitioners, are forbidden to pay dividends out of capital gains or to show such gains in their profit and loss accounts. The accounting firm of Barrow, Wade, Guthrie & Co., of New York City, of which Walter A. Cooper, C. P. A., was a partner, was engaged by Scottish to make a check or audit of its sales of

securities and resulting profit over the period of years prior to 1936. As the result of this audit taxes for the years 1927 to 1934, inclusive, in excess of \$1,000,000, plus interest of \$220,000, were paid by Scottish.

In 1935 F. H. N. Walker, the manager of Scottish, was in the United States and discussed with Cooper the question of opening an office in the United States for Scottish.

During September and October 1936 Cooper, together with Earl Breeding, an employee of Barrow, Wade, Guthrie & Co., made a trip to England and Scotland, where they visited a number of their firm's clients. They discussed with officials of petitioners the whole problem of opening an office for petitioners in the United States, including the ways in which a United States office might assist petitioners in business transactions and the effect of such an action in view of the Revenue Act of 1936. Cooper and Breeding left England in November 1936 without any decision having been reached by petitioners as to whether or not they would open offices in the United States.

On December 2, 1936, each petitioner appointed Cooper its assistant secretary and, on the same day, cabled its decision to Cooper. British and Second British wrote letters to Cooper dated December 2, 1936, informing him of his appointment and instructing him to proceed with the opening of an office in the United States. Scottish wrote Cooper a letter dated December 3 similar to those which the other petitioners wrote him under date of December 2, 1936.

Immediately upon receipt of the cables Cooper rented office space, consisting of two rooms on the twenty-sixth floor of the Equitable Building, at 120 Broadway, New York, New York, in which the firm of Barrow, Wade, Guthrie & Co. maintained offices on the twenty-seventh floor. A lease was taken out for each petitioner and a designated part of the office was leased for each petitioner for a specified sum per year. This office had a telephone which was connected with the switchboard in the office of Barrow, Wade, Guthrie & Co. Petitioners' United States office was established in order to enable petitioners to keep in closer touch with their large United States investments, to do themselves what had formerly been done for them by others, and to gain certain tax advantages.

Both before and after the opening of the United States office the securities of petitioners were in the custody of J. P. Morgan & Co. and the National City Bank. The securities were registered in the names of nominees. Prior to December 2, 1936, the securities were registered in the names of the bank's regular nominees, each of whom received a single dividend check on

behalf of a number of stockholders. During December 1936 Cooper made arrangements with J. P. Morgan & Co. and the National City Bank to designate for each petitioner a new nominee in whose name were registered only securities of such petitioner. By the end of December 1936 the new nominees had filed dividend mandates with the corporations the securities of which were held by the petitioners, directing payment of dividends and the sending of annual reports, statements, and notices to petitioners at their United States office.

During December 1936, Cooper obtained assistance from Barrow, Wade, Guthrie & Co. in establishing proper accounts for petitioners and in determining the methods of handling the affairs of the petitioners in the United States. The services of several employees of Barrow, Wade, Guthrie & Co. were devoted to the installation of a bookkeeping system and making current records in December 1936. During December 1936 the records of each petitioner were maintained on temporary sheets, copies of which were transmitted to the main offices in Edinburgh. Later the temporary records were written up in final form. The records maintained by the United States office were the original records of petitioners' transactions, receipts, and disbursements in the United States. All receipts of cash and all disbursements during

December 1936 were currently entered in the temporary record. Beginning in December 1936, all expenses of each petitioner in the United States were paid by the United States office.

Throughout the taxable years Cooper rendered services as assistant secretary of petitioners. In addition to Cooper the services of two women were employed full time throughout the taxable years to render stenographic and clerical services. From February 1938 through the taxable year 1939 Henry A. Jeffers, an employee of Barrow, Wade & Guthrie & Co., supervised the activities of the office and spent a total of 1,038½ hours on the affairs of petitioners during that period.

Beginning December 1936, and continuing through 1939, the dividends on United States securities to which each petitioner was entitled were collected by the United States office.

During December 1936 some of the dividends were paid directly to J. P. Morgan & Co., and the National City Bank because the dividends, while payable in the latter part of December, were payable to stockholders as of a record date prior to filing of mandates by the new nominees. By the end of December most of the dividends were being paid directly to petitioners' United States office.

Petitioners received the following amounts in dividends from United States securities:

	1936	1937	1938	1939
Scottish	\$295,912.78	\$1,143,408.97	\$730,021.45	\$731,180.92
British	673,119.74	823,253.10	548,923.43	579,355.47
Second British	342,508.75	339,280.85	262,292.80	259,735.11

Interest on bonds owned by petitioners continued to be collected by the banks having custody of the securities.

Checks for dividends collected by petitioners' United States office were endorsed and deposited by the office in petitioners' bank accounts in the United States. After establishment of the office in the United States in December 1936, J. P. Morgan & Co. did not send notices, annual reports, or proxies to Scottish or British.

Cooper was authorized by each petitioner to look after its interests in the United States. Specifically, he was authorized by each petitioner, as a matter of regular routine, to attend to the following:

- (1) The collection of interest and dividends, and deposit of such income in the company's bank account.
- (2) The payment of all local expenses.
- (3) The maintenance of records of all United States transactions.
- (4) The making of periodical reports (usually once a week), by cable and/or letter on economic, political or other developments in the United States.
- (5) The completion and filing of Federal income tax and capital stock tax returns.

Cooper was specifically authorized by each petitioner to draw on its bank account or accounts in the United States in amounts up to \$5,000 in any one calendar month, and up to any amount upon the counter-signature of a director. The authority of the assistant secretary of each petitioner in the United States was as great as the authority of any director or officer at the main office.

While the office of petitioners was maintained at 120 Broadway, petitioners filed New York State franchise tax returns. Later, petitioners moved this office to New Jersey, where they qualified to do business under the laws of that state. The office of petitioners in New Jersey consisted of a large room with one corner of it partitioned off as a private office. There was an outside telephone in the office with a New Jersey number and a trunk line to the office of Barrow, Wade, Guthrie & Co.

Each petitioner maintained in its office in the United States a general ledger, a security ledger, a general journal, and a cash book. The general ledgers, security ledgers, and cash books were looseleaf, while the general journals were bound volumes. Each petitioner maintained in its United States office debit and credit vouchers in which all sales and purchases of securities and disbursements of every character were entered. The books and record kept for each petitioner in petitioners' United States office constituted full and adequate records of petitioners' security transactions, receipt of income, and all disbursements in the United States.

Copies of cash sheets and journal entries were furnished to the main office of each petitioner monthly by petitioners' United States office. An annual statement was sent to the main office of each petitioner at the end of December of each year by the United States office. Usually the United States office sent a statement of income and disbursements as of December 1 to Edinburgh and brought that statement up to date at the end of the year by cable so that petitioners might close out their accounts quickly as of the end of the year.

The United States office periodically sent to petitioners' home offices various reports concerning the United States investments, such as annual reports of corporations in which petitioners had invested, and general developments in the United States, including statistical data issued by the Federal Reserve Bank and the New York Times. The United States office investigated reorganization plans of corporations in which petitioners owned securities and made recommendations to petitioners as to what action should be taken by petitioners.

At Cooper's suggestion each of petitioners in June 1937 appointed Breeding as an additional assistant secretary. Breeding was so appointed because of the illness of Cooper, who was required to take a long vacation by his doctor. Breeding's appointment provided for no additional salary.

Petitioners' assistant secretary in the United States had authority to direct nominees to sign proxies and to direct the disposition of stock rights and scrip. He exercised the latter responsibility without consulting the main offices of petitioners. He had authority to authorize the delivery of specific certificates on sales of securities for each petitioner and exercised such authority without consulting the main offices.

The United States office prepared the United States tax returns of petitioners.

The expenses of the United States office of the petitioners were paid out of the amounts received by Cooper for his salary. Cooper's salary from Scottish was paid directly by that company by check or draft. With respect to British and Second British,

Cooper drew his own salary checks on the accounts of those petitioners at the banks. Incidental expenses, such as stationery, office supplies, light, and telephone, were paid by checks drawn by Cooper on petitioners' accounts. The rent for office space was at first paid out of Cooper's salary. Later, at Cooper's request, petitioners assumed the charges for rentals. The amount paid Cooper for salary was subject to adjustment from time to time, depending upon the amount of expenditures incurred in connection with his activities. Every partner of Barrow, Wade, Guthrie & Co. who earned outside income was required by the partnership to turn over such income to the firm. The New York office expenses for petitioners were as follows:

	1936	1937	1938	1939
Scottish	\$1,302.78	\$7,456.86	\$9,391.36	\$7,728.39
British	1,319.07	6,918.76	6,060.72	6,193.82
Second British	590.26	2,853.42	2,799.78	2,533.71

Cooper left the firm of Barrow, Wade, Guthrie & Co. on October 31, 1940. Shortly after that time he tendered his resignation as assistant secretary of petitioners, which was accepted by each of petitioners.

Opinion

ARUNDELL: The only question before us is whether, or not, petitioners are resident foreign corporations taxable under section 231 (b) of the Revenue Acts of 1936¹ and 1938.² Petitioners contend that they were engaged in business in the United States during the taxable years and had an office or place of business here. They maintain that for these reasons they were resident foreign corporations during the taxable years. Respondent argues that petitioners had no real office or place of business in the United States and transacted no business in this country. He argues that petitioners' "office" was engendered solely for tax purposes and had not the substance of a real office. A resident foreign corporation is defined in section 231 (b) as a foreign corporation engaged in trade or business within the

SECTION 231. TAX ON FOREIGN CORPORATIONS.

(b) **RESIDENT CORPORATIONS.**—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a); but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

(c) **RESIDENT CORPORATIONS.**—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (c) (1).

United States or having an office or place of business here. In *Linen Thread Co., Ltd. v. Commissioner*, 128 Fed. (2d) 166, the Second Circuit Court of Appeals held that the terms "office" or "place of business" are not "mutually exclusive and though used in the statute in the disjunctive do not necessarily mean that an office may not be a place of business or the latter be but an office. Yet they apparently were not used synonymously * * *". The court further placed its stamp of approval on the Commissioner's regulations (art. 231-1 (b), Regulations 108 promulgated under the Revenue Act of 1938), which provide that:

"Whether a foreign corporation has an 'office or place of business' within the United States depends upon the facts in a particular case. The term 'office or place of business' however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected."

Other cases that throw light on the question presented are *Aktiebolaget Separator*, 45 B. T. A. 243; affirmed *per curiam*. — Fed. (2d) — (June 19, 1942), and the Board's opinion in *B. W. Jones Trust*, 46 B. T. A. 531.

88. With these fundamental concepts in mind, a brief résumé of the facts will be helpful in reaching the conclusion whether or not petitioners have been established within the United States an "office or place of business" within the meaning of the statute.

Petitioners are among the very largest of the foreign investment trusts with American holdings. Their investments were made primarily in conservative companies and they were interested in safety and an adequate return rather than in capital enhancement. The American investments represented many millions of dollars. It is not questioned that during the taxable years petitioners were actively engaged in carrying on the business for which they were organized.

Prior to December 1936 these petitioners had an arrangement with J. P. Morgan & Co. and the National City Bank to collect the income from their American securities and to otherwise keep them advised with reference to these securities. While these arrangements appear on the whole to have been satisfactory, there was some dissatisfaction with the failure to receive prompt information about the companies in which petitioners held securities and the Scottish company some time before had been required to pay more than \$200,000 interest to the United States Government by reason of its failure to promptly pay certain taxes which it did not realize were due. In order to secure better representation within the United States and because the Revenue Act of 1936

offered certain tax advantages to foreign corporations that established an office or place of business within the United States, petitioners decided in December of that year to establish such offices and took steps to that end by the designation of Cooper as assistant secretary of each of petitioners. He immediately and within the month rented space and opened offices and started business.

The offices so established by Cooper in behalf of petitioners and maintained through the several years, in our judgment, meet the test of the statute. They were not places for the mere handling of a casual or incidental matter, but in these offices were carried on regularly the various transactions that these offices were established to care for. Cooper was in charge and had under his direction two full time employees. Full and adequate records, as detailed in our findings of fact, were kept for each petitioner in the United States offices and it was here that all dividend checks were sent and thereafter deposited, and action on all proxies determined. Petitioners' home offices were kept informed of general developments in the United States and specific reports were made concerning petitioners' United States holdings. Reorganization plans of corporations in which petitioners owned securities were carefully followed and recommendations were made to the home offices concerning what steps, if any, should be taken to protect petitioners' interests. Stock rights and scrip when received were disposed of by petitioner's American representative without consultation with the home offices.

All United States tax returns of petitioners were prepared by the staff located in the United States. Moreover, the office expenses were not inconsequential. The expenses of Scottish for example, ranged from a low of \$1,382.78 for the short period of operation in December 1936 to a high of \$9,391.36 for 1938.

In our opinion, and office handling affairs to this extent must be regarded as real and substantial. It was here that a very large part of the affairs of petitioners in this country were taken care of. What we said in *B. W. Jones Trust*, supra, seems apropos:

"* * * Here there is nothing artificial about the office maintained for the trusts. This office was not merely a name or desk space for receiving dividends (see *Recherches Industrielles*, 45 B. T. A. 253), but an office in the sense of the common everyday conception. It was not established for purposes of compliance with a statute but was maintained in this country because of the administrative necessity of having local supervision of its affairs. Whatever affairs of the trusts were conducted in this country were transacted through that office. * * *

Not do we think one can take one by one each activity carried on in the American office of these petitioners and argue that each activity is not in and of itself the transaction of business. The collection of dividends and interest by a railroad that had leased its entire property and had ceased to function as such may not constitute the doing of business within the purview of the Revenue Act of 1909. *McCoach v. Mine Hill & S. H. R. Co.*, 228 U. S. 295, but it does not follow that the collection of the income of a large investment trust from hundreds of different sources is not to be regarded as the transaction of business. To reason otherwise might well lead to the conclusion that investment trusts are not engaged in carrying on a business.

Even if it be true that tax considerations prompted the opening of the offices in the United States, it would be of no particular significance. Congress extended the invitation to foreign corporations to establish an office or place of business in this country. So long as the office is not a sham but is a place for the transaction of business, petitioners qualify under section 231 (b). It should be noted that petitioners by opening offices in this country subjected themselves to the imposition of tax on certain gains on which they would not have been taxed had they been non-resident foreign corporations. See section 231 (a) of the Revenue Acts of 1936 and 1938 and Regulations 94 and 101, article 231-2 (a). Thus, if the petitioners had extensive capital gains in the taxable year they might well have been required to pay a greater tax by reason of being resident foreign corporations. The fact that the United States office was relatively small and that it was occupied by all three petitioners is not important. The joint occupancy of the office was a logical result of the fact that each of petitioners was engaged in a similar business.

We think petitioners have established that during the taxable years they had within the United States an office or place of business within the meaning of section 231 (b), supra: that the office was used for the regular transaction of business and not as a place where casual or incidental transactions might be, or were, effected. The conclusion reached requires that the year 1936 be accorded the same treatment as the latter years involved herein. The respondent is reversed. Decisions will be entered under Rule 50.

Before United States Board of Tax Appeals

Docket No. 104249

THE SCOTTISH AMERICAN INVESTMENT CO., LIMITED, PETITIONER

No. 22.

J. JACK COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

October 20, 1942

Pursuant to the Findings of Fact and Opinion promulgated on August 6, 1942, the respondent herein having on October 15, 1942, filed a recomputation of tax agreed thereto by counsel for petitioner, now, therefore, it is

Ordered and decided; that there is an overpayment in income tax for the calendar year 1936 in the amount of \$38,933.01 which amount was paid within three years before the filing of claim for refund (Section 809 (a), Revenue Act of 1938); and that there is no deficiency in income tax for the calendar year 1937.

Enter:

Entered Oct. 20, 1942.

(Signed) J. E. MURDOCK, Member.

93. Before United States Board of Tax Appeals

Docket No. 104250

BRITISH ASSETS TRUST, LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

October 20, 1942

Pursuant to the Findings of Fact and Opinion promulgated on August 6, 1942, the respondent herein having on October 15, 1942, filed a recomputation of tax agreed thereto by counsel for petitioner, now therefore, it is

Ordered and decided; that there is an overpayment in income tax for the calendar year 1936 in the amount of \$26,319.25 which amount was paid within three years before the filing of claim for refund (Section 809 (a), Revenue Act of 1938); and that there is no deficiency in income tax for the calendar year 1937.

Enter: *W*

Entered Oct. 20, 1942.

(Signed) J. E. MURDOCK, *Member*.

Before United States Board of Tax Appeals

Docket No. 104251

SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

October 20, 1942

94 Pursuant to the Findings of Fact and Opinion promulgated on August 6, 1942, the respondent herein having on October 15, 1942, filed a recomputation of tax agreed thereto by counsel for petitioner, now therefore, it is

Ordered and decided; that there is an overpayment in income tax for the calendar year 1936 in the amount of \$14,830.14, which amount was paid within three years before the filing of claim for refund (Section 809 (a), Revenue Act of 1938); and that there is no deficiency in income tax for the calendar year 1937.

Enter:

Entered Oct. 20, 1942.

(Signed) J. E. MURDOCK, *Member*.*Statement of points*

Filed May 26, 1943

Comes now the petitioner on review herein and makes this concise Statement of Points on which he intends to reply on the review herein, to-wit:

1. The United States Board of Tax Appeals erred in holding and deciding that taxpayers have established that during the taxable years they had within the United States an office or place of business within the meaning of section 231 (b) of the Revenue Acts of 1936 and 1938; that the office was used for the regular transaction of business and not as a place where casual or incidental transactions might be, or were, effected; that the conclusion reached requires that the year 1936 be accorded the same treatment as the later years involved; and that the taxpayers are taxable as resident corporations under said section 231 (b).

95 1. (a) The United States Board of Tax Appeals erred in finding and holding that taxpayers were entitled to be taxed as resident corporations during 1936, when the evidence clearly shows they maintained no office whatsoever for at least eleven months of the year.

2. The United States Board of Tax Appeals erred in failing to hold and decide that the taxpayers were not engaged in trade or business within the United States nor had an office or place of business therein within the meaning of section 231 (b) of the Revenue Acts of 1936 and 1938 and hence they are not taxable as resident corporations under that section.

3. The United States Board of Tax Appeals erred in failing to uphold the action of the Commissioner that the taxpayers were taxable as non-resident corporations under 234 (a) of the Revenue Acts of 1936 and 1938, and in failing to approve the asserted deficiencies in income tax of the taxpayers as follows:

	1936	1937
Scottish American Investment Company, Limited	\$63,631.57	\$113,921.68
British Assets Trust, Ltd.	22,535.98	84,743.68
Second British Assets Trust, Ltd.	20,637.22	27,962.61

4. The United States Board of Tax Appeals erred in failing to find the following facts:

(a) The firm of Barrow, Wade, Guthrie & Company had about 100 foreign clients, of whom approximately 75 were investment trusts. Mr. Cooper's association with Barrow, Wade, Guthrie & Company was as an expert accountant. He had not been 96 connected with investment companies in an official capacity and had never been an investment counsel.

(b) The United States securities which the petitioners owned were held both before and after 1936 by custodian banks in New York City. J. P. Morgan & Company, Inc., was custodian for Scottish American, National City Bank for Second British Assets, while the securities of British Assets were divided between the two custodian banks. The securities were at all times held in the names of nominees who were employees or associates of the custodian banks. Securities of investment companies held by a custodian bank or by brokers are usually carried in the names of nominees. Some of the larger ones who keep their securities in their own vaults have their own nominees or nominee firms.

(c) In the case of Scottish American the charge for custodian and collection service made by J. P. Morgan & Company, Inc., was 1/2 of one percent annually on the amount of securities handled,

and $\frac{1}{4}$ of one percent on the amount of income collected. In the case of British Assets the yearly charge made by J. P. Morgan & Company for custodian services, including collection of income, consisted of a percentage of the amount of securities maintained in custody for the year, at rate of $\frac{1}{16}$ of one percent on the first \$500,000, $\frac{1}{15}$ of one percent on the next \$500,000, and $\frac{1}{20}$ of one percent on all over a million dollars. No change was made by J. P. Morgan & Company either prior or subsequent to December 1936 in the basis or method of computing such charges. National City Bank previously charged a custodian fee and an income collection fee. After about December 1936, it charged only a custodian fee.

(d) All the policies of the petitioners were decided by their boards of directors in their main offices in Edinburgh. This included decisions as to what securities to buy and what to sell.

(e) During the taxable years each of the petitioners made many purchases and sales of securities through brokers in the United States, the sales of Scottish American for 1936 and 1937 amounting to approximately \$2,750,000 and \$1,350,000, respectively. Orders for such transactions were effected directly between the main office or the foreign brokers in Edinburgh and the United States brokers, the custodian banks delivering to the United States brokers the securities sold and accepting for custody any securities purchased. In some instances the custodian bank acted as broker. Petitioners did not carry any balances with the United States brokers and the transfer of moneys or credit was handled directly between the banks and the brokers.

(f) The New York "office" had nothing to do with purchases and sales of petitioners' securities, with the exception that where only a part of the stock of a certain corporation was sold Mr. Cooper would advise the bank which particular certificates to deliver to the broker.

(g) Where meetings of corporate stockholders were held Mr. Cooper, in the absence of instructions otherwise, could direct the nominees to sign proxies provided nothing of special importance was to come up at the meeting. In the case of British Assets and Second British Assets Mr. Cooper could authorize and direct the sale of stock rights (scrip) which might be received on shares of stock.

(h) Practically all of the work performed by the New York "office" of petitioners consisted of receiving and recording the dividend checks, recording the securities owned and changes therein from time to time, and paying and recording the organization and administration expenses incidental to the "office."

5. The United States Board of Tax Appeals erred in that its opinion and decisions are not supported by the evidence and are contrary to law.

(Signed) J. P. WENCHEL,

R. L. W.

J. P. Wenchel,

Chief Counsel,

Bureau of Internal Revenue.

Service of a copy of the within statement of points is hereby acknowledged this 17th day of May 1943.

(Sgd.) MARIAN N. FISHER,

Attorney for Respondents on Review

101 In United-States Circuit Court of Appeals

APPENDIX TO RESPONDENT'S BRIEF

Testimony

HENRY A. JEFFERS, called as a witness on behalf of the Petitioners, being first duly sworn, testified as follows:

Direct examination by Mr. FISHER:

Q. Mr. Jeffers, what books of account were maintained in the office of Scottish American in this country?

A. General ledger.

Q. Was that a bound book or looseleaf book?

A. A looseleaf book, a security ledger which is also a looseleaf book, a general journal which is a bound book, a cashbook, debit and credit vouchers, and the check book, of course.

Q. Was the cashbook a bound book or looseleaf book?

A. Looseleaf.

Q. I ask you to state what book you now hold in your hand?

A. General ledger.

Q. Of what company?

A. Scottish American Investment Co., Ltd.

Mr. FISHER. If your Honor please, I won't have these books offered or identified because I want to ask the witness questions as to the number and character of entries and the method employed in maintaining their accounts in this country, and therefore I offer in evidence the general ledger of Scottish American Investment Co., Ltd.

102 The MEMBER. Are you going to leave them with us?

Mr. FISHER. I don't think it would serve any point but

I want them identified so that the witness can testify as to the contents. I will ask that they be marked for identification.

The MEMBER. Perhaps that will be better. You don't see any necessity for them going into evidence?

Mr. THOMAS. Well, frankly, no, if the books are here and I can cross-examine from them.

The MEMBER. I should think it would be important to know the records kept here in a general way. Of course, the items, details, would be unimportant. Suppose we, at the moment, mark them for identification and then we can examine them later.

The CLERK. Petitioner's Exhibit 23 for Identification.

(Book received and marked "Petitioner's Exhibit 23" for Identification.)

By Mr. FISHER:

Q. Mr. Jeffers, I hand you another book bearing the legend outside "Scottish American Investment Co." and ask you to tell me what book that is.

A. This is the security ledger.

Q. Of what company?

A. Scottish American Investment Co.

Mr. FISHER. I ask that this be marked for identification "Petitioner's Exhibit 24."

The CLERK. Petitioner's Exhibit 24 for Identification.

(Book received and marked "Petitioner's Exhibit 24 for Identification.")

103

By Mr. FISHER:

Q. I hand you a third book bearing the name of the Scottish American Investment Co. on the outside and ask you what that book is.

A. This is the journal of the Scottish American Investment Co., Ltd.

Mr. FISHER. I ask that this be marked for identification.

The CLERK. Petitioner's Exhibit 25 for Identification.

(Book received and marked "Petitioner's Exhibit 25" for Identification.)

By Mr. FISHER:

Q. I hand you a fourth book and ask you to state what that book is.

A. This is the cashbook of Scottish American Investment Co., Ltd.

Mr. FISHER. I ask that that be marked for identification as "Petitioner's Exhibit 26."

The CLERK. Petitioner's Exhibit 26 for Identification.

(Book received and marked "Petitioner's Exhibit 26" for Identification.)

Q. I hand you the journal of the Scottish American Investment Co. and ask you to describe generally the opening journal entry giving its date.

Q. Have you counted the number of entries made in that journal in 1937, the full year?

A. Yes, sir.

104 Q. How many were there?

A. There were 89.

Q. How many pages of the journal did those entries take out?

A. 28 pages.

Q. How many entries were made in the year 1938?

A. 62.

Q. How many pages about did that require?

A. 23.

Q. How many entries were made in 1939?

A. 65.

Q. And how many pages did that require?

A. 27.

Q. Now, I hand you the cashbook of Scottish American and ask you to tell me what transactions were entered in the cashbook?

A. All transactions involving cash, either receipts or expended are recorded in the cashbook.

Q. Have you counted the number of entries of cash receipts recorded in that book under date prior to January 1, 1937?

A. Yes, sir.

Q. How many were there?

A. 123.

Q. Have you counted the number of cash disbursements under date prior to January 1, 1937, entered in that book?

A. Yes, sir.

Q. How many?

A. 62.

Q. How many cash receipts in the year 1937?

A. 912.

Q. And disbursements in the year 1937?

A. 506.

105 Q. How many receipts in the year 1938?

A. 812.

The MEMBER. Dividends and interest?

The WITNESS. Dividends and interest; yes, sir; and cash received from the sale of securities.

Q. And cash disbursements in 1938?

A. 275.

Q. Cash receipts from 1939?

A. 812.

Q. And cash disbursements for 1939?

A. 365.

Q. Dr. Jeffers, have you counted the number of credit vouchers to Scottish American bearing date prior to January 1, 1937?

A. Yes, sir.

Q. How many were there?

A. Five.

Q. And how many debit vouchers were there?

A. Eleven.

Q. How many credit vouchers were there for 1937?

A. 147.

Q. How many debit vouchers for that year?

A. 164.

Q. And credit vouchers for 1938?

A. 164.

Q. And debit vouchers?

A. 96.

Q. Credit vouchers for 1939?

A. 188.

106 Q. Debit vouchers?

A. 98.

Mr. FISHER. The witness tomorrow will explain what was currently done during December 1936. The permanent form of books was not established at that time, and he will explain what was done during that interval before they established, decided upon, and made entries in the permanent form of books and that is why I made the distinction in the form I asked the questions for the period prior to 1937.

I would like to complete the statistical data with respect to the cash book of the British Assets Trust, Ltd.

I haven't asked that that be marked for identification yet. If Mr. Thomas needs it for cross-examination, why, he can have that marked.

I ask that this cashbook of the British Assets Trust be marked for identification as "Petitioner's Exhibit" next in order.

The CLERK. Petitioner's Exhibit 32 marked for identification. (Book received and marked "Petitioner's Exhibit 32" for identification.)

By Mr. FISHER:

Q. Mr. Jeffers, how many entries of receipts appear in the cash-book under date prior to January 1, 1937?

A. 87.

Q. And disbursements for the same period?

A. 64.

Q. And receipts and disbursements, respectively, for 1937?

A. 819 receipts, 378 disbursements.

107. Q. Receipts and disbursements, respectively, for 1938?

A. 754 receipts, 333 disbursements.

Q. Receipts and disbursements, respectively, for 1939?

A. 874 receipts, 413 disbursements.

Q. Turning now to the vouchers of British Assets Trust, I ask you how many credit vouchers bearing dates prior to January 1, 1937, are in the records of British Assets Trust?

A. I don't know.

Q. How many debit vouchers?

A. 14.

Q. Credit vouchers and debit vouchers for 1937?

A. 64 credit vouchers, 124 debit vouchers.

Q. Credit vouchers and debit vouchers respectively for the year 1938?

A. 110 credit vouchers and 113 debit vouchers.

The MEMBER. What are debit vouchers, what they received?

The WITNESS. A debit voucher was used for the purchase of securities, expenditures of all expenses were all debit vouchers; in addition to that, we made out a debit voucher for expenditures of new securities, in the purchasing of new securities. Debits have to do with all purchases and expenditures of money.

The MEMBER. What was the nature of expenditures, paying your help?

The WITNESS. You mean other than the purchases of securities?

The MEMBER. Yes.

The WITNESS. Rent, light, telephone, financial services, bank charges, numerous things of that kind. The expenses of operating the office, it might be said, generally.

108 By Mr. FISHER:

Q. I might ask, in that connection, was there any compensation for personal service included in the expenditures?

A. Of which companies?

Q. Of any of them.

A. All of them; yes.

Q. To whom?

A. To Mr. Cooper.

Q. Did the companies pay any of the office help direct?

A. No, sir.

Mr. FISHER. That will be clarified more by testimony in the morning, sir.

Q. Now, referring to the vouchers of Second British Assets Trusts, how many credit vouchers were there under date prior to January 1, 1937?

A. There was one.

Q. How many debit vouchers?

A. 7.

Q. Credit and debit vouchers, respectively, for the year 1937 were how many each?

A. 52 credit vouchers and 79 debit vouchers.

Q. Credit and debit vouchers, respectively, for 1938 were how many?

A. 48 credit vouchers and 60 debit vouchers.

Q. Credit and debit vouchers, respectively, for 1939 were how many?

A. 112 credit vouchers and 85 debit vouchers.

By Mr. FISHER:

Q. I hand you a memorandum. Did you prepare that memorandum?

A. Yes, sir.

100 Q. Under the name Second British Assets Trusts, do the figures there correctly reflect the number of pages and number of entries that they purport to indicate for each of the periods indicated?

A. I believe they do; yes, sir.

Cross-examination by Mr. THOMAS:

Q. I will ask you the name of this book that I am handing to you?

A. It is a check book of Scottish American Investment Company Ltd., check book stubs.

Q. On what bank were those checks drawn?

A. J. P. Morgan & Company.

Q. Can you read just a few of the items and the amounts and the dates beginning at the beginning there?

A. Yes; the first check was drawn to the order of the Analyst, for \$9.00, subscription for the year 1937, December 28, 1936.

Q. What is the next one?

A. Haskell Printing Company, \$13.77, invoice December 7, 1936, letterheads and envelopes.

The third check is dated December 28, 1936, J. P. McWalters, Inc., \$6.15, invoice December 16, 1936, lettering on door.

Check No. 4, December 28, 1936, Moody's Investors Service, \$25.

Q. That is enough right now. Are there any checks there drawn payable to Mr. Cooper?

A. No, sir.

Q. Are these checks on the Scottish American bank account at J. P. Morgan & Company?

A. Yes, sir.

110 Q. A good many of those checks were written out to cover incidental office expenses?

A. Yes, sir.

Q. Of the space here occupied here in the United States?

A. That is, right; yes, sir.

Q. And Mr. Cooper—

A. I might say this, for example, here is an expenditure that is in connection with the head office abroad. That is, they are not all local expenditures.

Q. What is the nature of that item you are just pointing out?

A. Standard Statistics Company, Inc.

Q. That is for financial information?

A. Yes, sir.

Q. That was furnished to the office abroad?

A. That is right.

Q. Wasn't Mr. Cooper paid a certain stated amount by each of these three petitioners, out of which he was to pay the office expenses over here?

A. Yes, sir.

Q. How was the amount determined if the office expenses over here were charged to the petitioner's regular account at J. P. Morgan, or the National City Bank?

A. Mr. Cooper was paid by check direct in the case of Scottish American Investment Company. That is, a check doesn't appear here for his salary.

Q. Would he receive a check in the full amount of the salary he was to get?

A. Yes, the full amount, monthly.

Q. What I am trying to get at is, how he paid the office expense out of that amount when the checks for expenses were drawn against the companies' accounts?

A. At the end of each year adjustments were made. They were paid here direct, and certain adjustments were made at the end of the year.

111 The MEMBER. Is that the account, against which these checks were drawn, the general account of the corporation or some special account?

The WITNESS. The ~~drawn~~ drawn against the only bank account, except one small account of the Scottish American in J. P. Morgan & Company. It is a general account with the company. There was a special account, a collection account, very small and quite insignificant.

Mr. FISHER. I suggest, Your Honor, that when Mr. Cooper takes the stand he can clarify this in much shorter time because it goes back to a date earlier than his detailed knowledge runs.

By Mr. THOMAS:

Q. Mr. Jeffers, Barrow, Wade, Guthrie & Company prepared and have prepared the income tax returns for these petitioners for the taxable years.

A. During the years that I have been connected with the companies' affairs I have prepared them, as an employee of these companies.

Q. Was any charge made to the petitioners for any work in connection with the preparation of these returns?

A. Not to my knowledge.

Q. Did Barrow, Wade, Guthrie & Company make any other charges during these taxable years that you know of, for services?

A. If they did, I wouldn't be familiar with it.

Q. Did you have anything to do at any time with the figuring out or checking the amount of commissions, or handling charges due to any of the custodian banks?

A. You say, did I have anything to do with it? The only 112 checks I had would be to advise the bookkeepers and clerks in the event they wanted advice and couldn't clearly understand the situation. I did not do the actual calculating myself. At this moment I could not tell you the rate we paid. They are familiar with that.

Q. Do you know whether or not during the taxable years, whether J. P. Morgan in connection with Scottish American Investment Company charged one-fourth of one per cent for the income collected from dividends?

A. At the moment I don't think I could say what the rate is.

Mr. THOMAS. That is all.

Redirect examination by Mr. FISHER:

Q. Mr. Jeffers, were you required in your employment with Wade, Barrow, Guthrie & Company to keep a record of the time you spent, of the various kinds of work done for various clients?

A. Yes, sir.

Q. Did you keep the time spent on the affairs of these companies?

A. I did; yes, sir.

Q. Have you determined, recently, the amount of time you spent in each of the years that you worked on the affairs of these companies?

A. Yes, sir.

Q. State the number of hours you worked on the affairs of the Scottish American by years?

A. From February 28, 1938, to December 31, 1938, I spent 210 hours on Scottish American Investment Trust Company.

From January 1, 1939, to December 31, 1939, I spent 309 1/4 hours on Scottish American Investment Company alone.

113 Q. Have you the corresponding figures for British Assets Trust?

A. Yes, sir.

Q. State them as briefly as possible.

A. For the first period: 147 hours.

Q. For the second period?

A. For the second period, 216 1/4 hours for British Assets Trust.

For Second British Assets Trusts, for the first period 63 hours; for the second period 93 hours.

Q. Were there any persons employed who put their full time on the affairs of these companies during the time you are familiar with the operations?

A. Yes.

Q. Name them.

A. Miss Alma Wasmuth, during the entire period.

Q. Anyone else?

A. A Miss Davis, during the entire period.

Q. Of your connection?

Mr. THOMAS. What do you mean by entire period?

The WITNESS. The entire period of my connection with these companies, up to the end of the period covered by these cases before the Court.

By Mr. FISHER:

Q. Did they spend any time on other affairs of Barrow, Wade, Guthrie & Company?

A. No, sir.

Q. You testified that you did not know as to the actual time of entry of items in the books of account. Are you familiar with whether or not the entries were currently made after you became actively connected with the affairs of the company?

A. Yes, sir.

Q. Were they currently made?

A. Yes, sir.

14 Q. Your active connection began when?

A. February 28, 1938.

Re-cross-examination by Mr. THOMAS:

Q. Mr. Jeffers, at the time you took over the management of these books, you say that was in February 1938?

A. That is correct.

Q. At that time these offices were at 120 Broadway?

A. They were still there; yes, sir.

Q. Were the offices of all three of the petitioners in one room?

A. Two rooms, I think—the leases will show that, of course.

Q. Were there any certain desks assigned to each petitioner?

A. Well, I don't think so.

Q. Did you state there was one other full-time employee while you were there?

A. There were two.

Q. How were they paid or how were charges for their services apportioned between the different petitioners?

A. I am not familiar with that question, sir.

Q. How many telephones were there in the room or rooms?

A. I think there was one. There may have been two. I am not sure.

Q. Then each of the three petitioners had the same telephone number; that correct?

A. Yes, sir.

Q. And that telephone number was also the same as Barrow, Wade, Guthrie & Company, was it not?

A. That is something I couldn't say. It is something I haven't checked, and I don't know, frankly.

Q. Don't you remember?

A. No; I had nothing to do with it. When I went to work 115. for them, I used the telephone, and naturally I did not have to use it much because my contact with the telephone was outgoing and incoming, and I did not have to call a number, but I would probably guess it was the same, but I don't know.

Q. Did Barrow, Wade, Guthrie & Company have their own private operator?

A. Yes, sir.

Q. When you made calls from the petitioners' phone, would they go through the same operator?

A. Yes; I would say that is true; yes, sir.

Q. Over in Jersey, was that 26 Journal Square?

A. That is correct; yes, sir.

Q. What was the nature of the space over there? Describe it.

A. They leased a large room and partitioned off a section for a private office. That was the lay-out of the room.

Q. One room?

A. One large room, out of which they took the corner office for my own use.

By Mr. FISHER:

Q. When the offices were moved to Jersey City, was the telephone separate from the telephone of Barrow, Wade, Guthrie & Company?

A. Yes, sir.

Q. What means of communication was there between the offices of Barrow, Wade, Guthrie & Company and the offices of these in Jersey City?

A. There was a trunk line run from 120 Broadway to 26 Journal Square.

Q. Was there any other telephone service?

A. Yes, sir; we had a New Jersey telephone also.

Q. Do you mean by that a Jersey City number?

A. Yes, sir; and a telephone.

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WALTER A. COOPER, called as a witness on behalf of the petitioners, being first duly sworn, testified as follows:

Direct examination by Mr. FISHER:

Q. Had Barrow, Wade, Guthrie & Company represented the Scottish American Investment Company prior to December 1936?

A. Yes; we acted for them in certain matters.

Q. For about how long, do you know?

A. We started Scottish American Investment Company in 1934, probably in the spring or early summer.

Q. What about British Assets Trust and Second British Assets Trusts?

A. That started in 1935.

Q. Was there any practice in the firm of Barrow, Wade, Guthrie & Company, regarding visits to their clients in England?

A. We always made it a point to have at least one partner abroad each year calling on our clients, of course, on the other side.

Q. Did your partnership agreement of Barrow, Wade, Guthrie & Company permit you to earn outside income?

A. Not for my own account. I was permitted to undertake anything I wanted to do, but if I received income, it had to be turned into the firm, or I had to account to my partners for their share of it.

Q. That provision applied to all partners?

A. Yes, sir.

Q. Was any visit made to England by any member of the firm in 1936?

A. Yes; Mr. Ritchie went over.

117 Q. Was that the only visit in 1936?

A. No; I went abroad.

Q. When did you go?

A. I think it was September 21st. It was the latter part of September, about that time.

Q. Did you take anyone with you?

A. Yes; Mr. Breeding went with me.

Q. Is Mr. Breeding a member of the firm?

A. No.

Q. What is his status?

A. Well, I guess you would call him a manager. That is the title given to men who are not members, but who are one step below.

Q. Did you visit any substantial number of the firm's clients on your trip to England which began in September 1936?

A. Yes, I visited quite a few of our own clients, and I visited our London correspondent's office, in Glasgow also, and visited quite a few companies who were not clients but whom we hoped would become clients.

Q. Did you visit the Scottish American and British Assets and Second British Assets?

A. I did.

Q. Mr. Cooper, tell the circumstances as well as you can recall them, regarding the decision to open an office in this country by each of those companies?

A. Well, we first had our discussions in the United States and I should say in the latter part of November or beginning of December 1935.

Mr. Walker, one of the employees of the company, I think they call them investment manager or something like that—

Q. Which company?

A. Of Scottish American Investment Company. This all relates at this point to Scottish American because we had at that time no discussion with the British Assets Trust. Mr. Walker was here, and at that time we acquainted him with the probable income tax, that his company would have to pay for a number of prior years, I think for the period from 1927 to 1934.

The companies—incidentally, that was the basis of our first connection with the Scottish American Investment Company. They had apparently failed to file income tax returns because they did not appreciate that they were subject to United States income tax on capital gains. They don't figure them in their records, and they

can't pay it out, and their charters prevents them from showing it in their P. & L. account.

Our job first which we were engaged to do in 1934 was to figure through all the records of the brokers and banks to find out what their proper tax liability amounted to. We had of course quite a difficult time in getting all the data, and it was towards the end of 1935, when we were reaching a concluding point to know just what was involved, that Mr. Walker happened to be over here, and we told him all about it.

It looked then as though they would have to pay back taxes over something like a million dollars, and the interest on that amount was something like \$220,000, or we knew it was over two hundred, anyway.

We had not reached any final figures. They were not particularly bothered about paying a million dollars, because they simply charged that to their investment account, but they were very much concerned about paying \$200,000, because that was a charge to income, as in the case of other investment companies, and Mr. Walker said we might have kept our office open here all along.

They apparently had an office for some prior period and closed it up, and unfortunately the interest that they had to pay on these back taxes involved a lot more than it would have cost them if they had kept their office here all along.

119 I immediately took it up, and I said, "I can be very representative and handle whatever you want to know."

He said, "That is something we had better think about," and he said, "If we are going to be faced with these problems we ought to do something about it, especially since it is costing us more not to have an office," because he paid this additional interest. And he left then with that in mind to talk to the directors when he got back.

When I was over there, I don't recall whether I got to Edinburgh before the end of September; no, it was in October when I got to Edinburgh, and we discussed the matter with the secretary, and finally met the board of the Scottish American Investment Company. Talked to them about the whole problem, and not only what we could do as a secretary or whatever office they wanted to appoint us to, in helping them in their whole operations, but we also had to explain at that time the new Revenue Act which had come out in the meantime.

We first talked about it because it was brand new in 1936. So I explained to them just how that would work, that if they had an office or established an office here, they would not have to pay their tax on a withholding basis, but any capital gains would have to be taxed, and of course they just paid a million dollars on capital gains, and of course if they didn't have an office there would be

no tax on capital gains, and they would not have to pay any attention to capital gains as they were previously required to do, but their interest and income would be subject to direct withholding at the source as it came through.

We made some computations, but you couldn't tell how it was going to come out, because it would depend on whether they had capital gains or not.

We discussed it with the board, and they discussed it on the basis on which I could open the office.

It is common practice to appoint a secretary or assistant secretary, and say we will give you so much money per year and you take care of everything out of that, and they do that because it's cheaper to let four or five companies appoint one man secretary and give him so much per annum, and anything left is for his own benefit, and in that way the company pays less.

I could not give them the exact figures at the time; and I suggested somewhere between seventy-five hundred and ten thousand dollars would be the likely cost.

Q. Did they reach any decision—withdrawn.

Q. Did you discuss the situation, the question of opening an office with the British Assets Trust and Second British Assets Trust?

A. Yes; in Edinburgh, the British Assets and Second British Assets Trusts are connected, and we were meeting them at different times, and with Mr. Ivory, and we discussed the same problems with him.

Also, when they had their board meetings we went over to meet the board. I don't know whether Mr. Breeding was with me at those conferences, but I met the board and talked to them, too.

At the time I left, they did not know whether they wanted an office or did not, and if they were going to do anything they might do it the following year, so when we left England in November, they had told me at that point they did not decide to do anything and apparently when I got back they had a second directors' meeting and decided to open an office and cabled me accordingly.

Q. You stated that it wasn't unusual for more than one company to have a joint secretary to whom they would pay a stated sum and the secretaries bear all expense of operations of certain types. Were there any other instances besides this arrangement that you are familiar with, that you can recall?

A. Well, I know of about, I should say, close to fifty, if not more than fifty, investment trusts in England and Scotland, and out of all of them the Scottish American is only one that has a single office by itself, all the others have a combination of three to eleven, so they are all at one place with the same

employees doing the work for all of them; in that way they can get better services at less cost.

Even the British Assets and the Second British Assets in this case have one office with the same secretaries, with Ivory and Sime.

Q. I show you Petitioner's Exhibit No. 5, from Scottish American Investment, dated December 3rd. Is that the only advice you got that you had been appointed assistant secretary and should open an office here, proceed to open an office here?

A. No; it is my recollection that I got a cable before this. I think it was on a Thursday morning because they have a meeting on Wednesday, and saying they had decided to open an office here, and appoint me secretary, and the papers were on the way.

Q. Did you do anything toward opening an office before you got the cable?

A. No; nothing whatsoever. We had no idea at that point that they were going to open an office.

Q. These exhibits put in show that about May 1937 Mr. Breeding was elected as an assistant secretary also; do you know anything about why that was done?

A. Yes; I requested them to do it, for this reason: I had not been feeling any too well, and I had a rather hectic year on top of the fact that I had not been away for ten years, and the doctor told me to get away for the whole summer, and I was laying my plans to stay away for the whole of the summer of 1937, and we just do not leave the offices without having somebody handy, and I was going to be several hundred miles away from New York, where I wasn't going to be readily available, so

I suggested to the company that in view of the fact that I would be away they ought to appoint somebody else as an assistant secretary to act while I wasn't there, and that led to the appointment of Mr. Breeding, whom they had met when he was abroad with me in 1936.

When I came back, which was the week after Labor Day, I decided things were moving so rapidly and I had to go away days here and days there, it would be just as well if we kept two secretaries to act.

Q. The appointment as shown by the Exhibits already in evidence did not give Mr. Breeding the authority to draw on the bank or sign checks. Was that limitation removed at any later time?

A. Well, as a matter of fact, we didn't realize he did not have that authority until we signed some checks and they came back. I think we took immediate steps to have it corrected, if we could.

Q. I show you a letter dated February 9, 1939, from Scottish American, and ask you whether or not that letter was received by you in due course?

A. That is right.

Mr. FISHER. I offer in evidence letter from Scottish American to Cooper, dated February 9, 1939.

The MEMBER. It will be received.

The CLERK. Petitioner's Exhibit 39.

(Received in evidence and marked "Petitioner Exhibit 39.")

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Petitioner's Exhibit 7

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

123 George Street

EDINBURGH 2, 18th June 1937.

W. A. COOPER, Esq.,

Assistant Secretary, The Scottish American Investment Co., Ltd., 120 Broadway, New York.

DEAR SIR: With further reference to your letter to me of 19th May 1937, I have to inform you that my Directors at their Meeting on 16th instant appointed Mr. Earl B. Breeding an Assistant-Secretary of the Company in addition to yourself. Mr. Breeding will have the same duties and authority as you have, except that Mr. Breeding will not have authority to draw on the Company's Bank Account. I enclose copy of the formal Resolutions. I have today sent to Messrs. J. P. Morgan & Co. a similar copy, except that paragraph 3 has been omitted.

Yours faithfully,

J. R. McLAREN, *Secretary.*

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Petitioner's Exhibit 8

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

Copy of Resolutions passed at Board Meeting held at Edinburgh,
16th June 1937

It was resolved—

1. that Mr. Earl B. Breeding be appointed an Assistant Secretary of the company in addition to Mr. Walter A. Cooper;

2. that the duties and authority of Mr. Breeding be the same as those of Mr. Cooper except that Mr. Breeding will have no power to draw on the company's accounts with Messrs. J. P. Morgan & Co.;

3. that Mr. Breeding's remuneration be provided by Mr. Cooper and not by the company.

Certified a true Copy.

For and on behalf of

THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED.

A. W. ROBERTSON-DURHAM, *Director.*

C. D. KING, *Director.*

J. R. McLAREN, *Secretary.*

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Petitioner's Exhibit 15

BRITISH ASSETS TRUST, LTD.

9 Charlotte Square

EDINBURGH 2, 31st May 1937.

WALTER A. COOPER, Esq.,

Messrs. Barrow, Wade, Guthrie & Co.,

120 Broadway, New York.

Appointment of Additional Assistant Secretary

DEAR SIR: We duly received your letter of 19th instant, and in view of what you say regarding your proposed vacation shortly, we approve of appointing Mr. Breeding as joint assistant along with you, to carry on the office work, with the exception that we are not giving him authority to sign drafts on the Bank Accounts and that the compensation already arranged is to cover his appointment. We are writing the National City Bank of New York and Messrs. J. P. Morgan & Co. advising them of this; and at the next Meeting of Directors we will have a resolution passed approving of the appointment. If you wish to have an excerpt of this, you can let us know in course.

Yours faithfully,

A. W. ROBERTSON-DURHAM,

Director.

IVORY & SIMP, *Secretaries.*

JSB/C.

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Petitioner's Exhibit 22

SECOND BRITISH ASSETS TRUST, LTD.

9 Charlotte Square

EDINBURGH 2, 31st May 1937.

WALTER A. COOPER, Esq.,

Messrs. Barrow, Wade, Guthrie & Co.,

120 Broadway, New York.

Appointment of Additional Assistant Secretary

DEAR SIR: We duly received your letter of 19th instant, and in view of what you say regarding your proposed vacation shortly, we approve of appointing Mr. Breeding as joint assistant along with you, to carry on the office work, with the exception that we are not giving him authority to sign drafts on the Bank Accounts and that the compensation already arranged is to cover his appointment. We are writing The National City Bank of New York advising them of this, and at the next Meeting of Directors we will have a resolution passed approving of the appointment. If you wish to have an excerpt of this, you can let me know in course.

Yours faithfully,

A. W. ROBERTSON-DURHAM,

Director.

JSB C.

IVORY & SIME, Secretaries.

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Petitioner's Exhibit 33

CASHBOOK

NUMBER OF ENTRIES MADE

	1936	1937	1938	1939	Total
Scottish American Investment Co., Ltd.					
Cash receipts	125	912	812	812	2,661
Cash disbursements	62	508	275	565	1,308
British Assets Trust Ltd.					
Cash receipts	87	819	754	874	2,534
Cash disbursements	94	578	333	413	1,188
Second British Assets Trust Ltd.					
Cash receipts	43	432	372	415	1,262
Cash disbursements	31	151	127	232	541
Total					
Cash receipts	255	2,163	1,938	2,101	6,457
Cash disbursements	157	1,035	735	1,010	2,937

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Petitioner's Exhibit 34

JOURNAL--DATA

	1936	1937	1938	1939	Total	Average over 3 full years
Scottish American Investment Co., Ltd.						
Number pages opening entry	13				13	
Number pages	4	28	21	27	82	20
Number entries	11	89	62	65	227	57
British Assets Trust, Ltd.						
Number pages opening entry	10				10	
Number pages	2	22	29	36	89	22
Number entries	5	68	75	78	230	58
Second British Assets Trust, Ltd.						
Number pages opening entry	5				5	
Number pages	2	15	16	21	56	14
Number entries	4	53	51	60	168	42
Totals						
Number pages opening entries	20				20	
Number pages	8	65	68	89	227	57
Number entries	21	210	191	203	625	156

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Petitioner's Exhibit 38

VOUCHERS

	1936	1937	1938	1939	Total
Scottish American Investment Co., Ltd.					
Credit vouchers	5	147	164	188	504
Debit vouchers					
Noncheck vouchers	2	87	16	20	125
Check vouchers	9	77	80	78	244
Total debit vouchers	11	164	96	98	369
British Assets Trust Ltd.					
Credit vouchers		64	110	230	404
Debit vouchers					
Noncheck vouchers	6	60	59	52	206
Check vouchers	8	64	54	52	178
Total debit vouchers	14	124	113	135	386
Second British Assets Trust, Ltd.					
Credit vouchers	1	52	48	112	213
Debit vouchers					
Noncheck vouchers	1	14	13	29	57
Check vouchers	6	65	47	56	174
Total debit vouchers	7	79	60	85	231
Totals					
Credit vouchers	6	263	322	580	1,171
Debit vouchers					
Noncheck vouchers	9	161	88	132	390
Check vouchers	23	206	181	186	596
Total debit vouchers	32	367	269	318	986

Petitioner's Exhibit 39

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

45 Charlotte Square

EDINBURGH 27th February 1939.

W. A. COOPER, Esq.,

Assistant Secretary, The Scottish American Investment Co., Ltd.,
26 Journal Square, Jersey City, N. J.

DEAR MR. COOPER: At a Board Meeting held yesterday the Board passed a number of Resolutions dealing with our Banking arrangements. I enclose a copy of these Resolutions in so far as they affect our relations with our American Bankers. I have also forwarded a certified copy of these Resolutions to Messrs. J. P. Morgan & Co. The object of passing these Resolutions was to consolidate all previous Minutes, etc., dealing with our Banking

131 arrangements. At the same time, we have made a few minor alterations. The only change of any importance is that Mr. Breeding and you now have equal powers in regard to drawing on Morgans. These provisions are contained in XI-(f). The Resolutions required by the First National Bank of Jersey City in connection with the death of Mr. Pitman and the appointment of Mr. Blair will be dealt with at next week's Board Meeting. I shall send you copies in due course.

Yours faithfully,

J. R. McLAREN, *Secretary*.

132 Proceedings in the United States Circuit Court of Appeals
for the Fourth Circuit

No. 5122

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
RESPONDENT

On Petition to Review the Decision of The Tax Court of the
United States

June 26, 1943, the transcript of record is filed and the cause docketed.

Same day, motion for extension of time to transmit record is filed.

Order extending time for completion and transmission of record

Filed June 26, 1943

(Style of Court and Title Omitted)

Upon motion of Petitioner, by his counsel, and for good cause shown,

It is ordered that the time for the completion and transmission of the record on review in this case be, and the same is hereby, extended from April 17, 1943, to and including July 17, 1943.

April 7th, 1943.

JOHN J. PARKER,
Senior Circuit Judge.

Same day, to wit, June 26, 1943, certified copy of order enlarging time for the preparation, transmission and delivery of the record to April 17, 1943, is filed.

Same day, motion to consolidate is filed.

Same day, order of consolidation is filed.

[Memo of Clerk: This order is set out at page 637 of the transcript of record and is, therefore, omitted here.]

June 29, 1943, the appearance of Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, Special Assistant to the Attorney General; J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and John M. Morawski, Special Attorney, Bureau of Internal Revenue, is entered for the petitioner.

133 Same day, the appearance of Marion N. Fisher and William H. Harra^o is entered for the respondent.

September 13, 1943, the appearance of Samuel O. Clarke, Jr., Assistant Attorney General; Sewall Key, Samuel H. Levy, Helen Goodner and Warren F. Whittles is entered for the petitioner.

Same day, brief on behalf of the petitioner is filed.

Same day, appendix to the brief of the petitioner is filed.

September 28, 1943, brief and appendix on behalf of the respondent are filed.

Argument of cause

October 12, 1943 (October term, 1943), cause came on to be heard, together with Nos. 5123 and 5124, before Parker, Soper and Dobie, Circuit Judges, and was argued by counsel and submitted.

Opinion

Filed November 8, 1943

United States Circuit Court of Appeals Fourth Circuit

No. 5122

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
RESPONDENT

No. 5123

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

BRITISH ASSETS TRUST, LIMITED, RESPONDENT

No. 5124

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

SECOND BRITISH ASSETS TRUST, LIMITED, RESPONDENT

On Petitions to Review the Decisions of the Tax Court of the
United States, formerly the United States Board of Tax Appeals

(Argued October 12, 1943. Decided November 8, 1943)

Before PARKER, SOPER, and DOBIE, Circuit Judges

Warren F. Wattles, Special Assistant to the Attorney General
(Samuel O. Clark, Jr., Assistant Attorney General; Sewall
134 Key, Samuel H. Levy and Helen Goodner, Special Assistants
to the Attorney General, on brief) for Petitioner; and
Marion N. Fischer (William H. Harris on brief) for Respondents.

DOBIE, Circuit Judge: Scottish American Investment Company,
Limited, British Assets Trust, Limited, and Second British As-
sets Trust, Limited, are all corporations organized under the laws
of Great Britain. Each has its principal office in Edinburgh, Scot-
land. For convenience, the three corporations are hereinafter
called the Trusts. The Trusts were engaged in the business of
investing the funds of their security holders. These investments
were made primarily for the purpose of security of principal and
adequacy of income.

On December 2, 1936, the Trusts had over \$40,000,000 invested
in securities in the United States. Walter A. Cooper, C. P. A.,
(hereinafter called Cooper) had been engaged by Scottish American
Investment Company, Limited, for the purpose of making an
audit of this Company's sales of securities and profits for a period
of years prior to 1936. Cooper was a partner in the accounting
firm of Barrow, Wade, Guthrie & Co., of New York City.

In September and October, 1936, Cooper and Breeding (an em-
ployee of the Barrow Wade firm) discussed in Scotland with of-
ficers of the Trusts the problem of opening an office for the Trusts

in the United States. In that connection, the possible advantages of such an office as to taxes in the United States were considered. Cooper and Breeding, however, returned to the United States without any agreement having been reached as to the opening of an office for the Trusts in the United States.

Each of the Trusts, by cable on December 2, 1936, appointed Cooper its assistant secretary and authorized him to open offices for the Trusts in the United States. Letters to Cooper, of even date, confirmed the cable and contained further instructions. Cooper, immediately upon receipt of the cable, rented office space of two rooms in the Equitable Building in New York, on the floor just below the offices of the Wade-Barrow firm. A lease of one year was executed, with a designated portion of the offices assigned to each of the Trusts. Cooper seemed to act with unusual speed to set in motion the activities of the offices of the Trusts. The New York banking firms having custody of the securities of the Trusts were furnished with the names of new nominees for these securities. The American corporations, whose securities were owned by the Trusts, were notified to send reports, statements and notices, and to pay dividends, to the New York offices of the Trusts. Employees were engaged, a telephone (connected 135 through the switchboard of the Wade-Barrow firm) was installed, and a system of bookkeeping and accounts was set up.

As assistant secretary, Cooper had the same measure of authority as any officer or director of the Trusts at the home office in Scotland. Definite authority was given to Cooper: (1) to collect and deposit in the bank accounts of the Trusts dividends on the American securities; (2) to draw on these accounts up to \$5,000 a month and to pay local expenses of the New York office; (3) to keep complete records of the American securities; (4) to make periodic reports (usually once a week) by cable and/or letter concerning economic and political developments in the United States; (5) to complete and file federal income-tax and capital-tax returns; (6) to forward plans of corporate reorganizations and to make definite recommendations to the Trusts concerning the action to be taken by the Trusts in connection with such reorganizations; (7) to dispose of stock rights and scrip; (8) to act, under certain circumstances, on proxies; (9) to designate the specific stock certificates to be transferred upon a sale by the Trusts of less than all of their holdings in a particular corporation.

We are here concerned with income taxes of the United States on the Trusts for the calendar years of 1936 and 1937. The three cases were argued together and may be disposed of in a single opinion. The Board of Tax Appeals (hereinafter called the Board, and now the Tax Court of the United States) decided that the Trusts were resident foreign corporations and taxable accordingly.

Whether or not the Trusts are taxable as resident foreign corporations depends on whether or not the Trusts had "an office or place of business" within the United States under section 231 (b) of the Revenue Acts of 1936 and 1938 which reads:

"SEC. 231. Tax on foreign corporations.

(b) Resident corporations.—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a), but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

(b) Resident corporations.—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (e) (1)."

Regulations of the Commissioner of Internal Revenue, 101 (art. 231-1 (b)) under the Revenue Act provides:

136 "Whether a foreign corporation has an 'office or place of business' within the United States depends upon the facts in a particular case. The term 'office or place of business,' however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected."

We agree with the Board that the Trusts, under the Statute and Regulations, had "an office or place of business" within the United States and that they were thus properly taxed for the years in question as resident foreign corporations.

Reduced to its simplest terms, the contention of the Commissioner seems to be that the business of the Trusts was primarily the purchase and sale of securities, that all decisions as to such purchases and sales were made in Edinburgh and orders therefor were given directly from Edinburgh to brokers in the United States, that, accordingly, the many and varied activities of the New York office of the Trusts were merely "casual or incidental." Hence, the Commissioner asserts, the Trusts, within the meaning of the Revenue Acts and the Regulations, had no "office or place of business" within the United States and, therefore they were not resident foreign corporations and not taxable as such. We cannot concur in so broad a contention.

The cases cited in the brief of the Commissioner are not opposed to the decision reached by the Board in the instant case. See *Linco Thread Co. v. Commissioner*, 128 F. (2d) 186, cert. den. 317 U. S. 673; *Aktiëbolaget Separator v. Commissioner*, 45 B. T. A. 243, affirmed per curiam 128 F. (2d) 739; *B. W. Jones Trust v. Com-*

missioner, 132 F. (2d) 914. In the Linen Thread case and the Aktiebolaget case, the activities and responsibilities of the office in the United States were neither so important nor so extensive as were those of Cooper here. In the Linen Thread case, too, the foreign corporation was a manufacturer, and the investments were in the nature of a side issue, while investing was the sole business of the Trusts before us. In the B. W. Jones Trust case (decided by this Court) the resident trustee had more responsible and more important duties than Cooper had, for that trustee had actual custody of the securities, and he had the power to make sales and purchases. Yet this case does not hold that such power on the part of the resident trustee, agent, or officer is essential in order that the foreign corporation may have an "office or place of business" within the United States under our tax statutes.

We think there is more than ample support in the record for the finding by the Board that the trusts here had an "office or place of business" within the United States. The duties, powers, and responsibilities of Cooper were far from being purely ministerial, casual or incidental. He was vested with real discretion, his duties were varied and important, the transactions passing through his office in connection with the American investments of the Trusts were many in number and involved large sums of money. And this is nevertheless true, even though he had no power to make final decisions as to what securities were to be bought or sold. There was nothing artificial or sham about this office. We agree, too, with the Board that the proper approach to this problem is not to consider each activity and power separately and to analyze it apart so as to determine whether that one activity or power, considered alone, can be construed as casual or incidental. But the composite picture of these activities and powers must be viewed as an integrated whole, and a solution must be sought accordingly. The strength of a rope is not that of a single strand, or as Mr. Justice Holmes aptly said in *Edwards v. Chile Copper Co.*, 270 U. S. 452, 455:

"We cannot let the fagot be destroyed by taking up each item of conduct separately and breaking the stick. The activities and situation must be judged as a whole."

Perhaps more favorable treatment under our tax laws may have been a prime determinant in inducing the Trusts to open and operate this New York office under Cooper's charge and direction. But this does not prevent this office, if in reality that is just what it was, from being an "office or place of business," with the rights, privileges, and advantages thereunto appertaining under our tax laws.

Finally, the Commissioner contends that there was certainly no "office or place of business" here for the year 1936. The foreign corporation is classified and taxed as a resident foreign corporation, if the corporation has an office or place of business within the United States "at any time within the taxable year." Regulations 94, Art. 231-1. We think that what has been said about the activities and operations of Cooper during the month of December 1936 affords ample support for the Board finding that the Trusts had an "office or place of business" within the United States at some "time within the taxable year" of 1936.

The decision of the Board of Tax Appeals is affirmed:
Affirmed.

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Judgment.

Filed and Entered November 9, 1943

United States Circuit Court of Appeals, Fourth Circuit

No. 5122

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
RESPONDENT.

On Petition to Review the Decision of The Tax Court of the United States, formerly United States Board of Tax Appeals

This cause came on to be heard on the transcript of the record from The Tax Court of the United States, formerly United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the decision of the said The Tax Court of the United States, formerly United States Board of Tax Appeals, in this cause, be, and the same is hereby, affirmed.

November 9, 1943.

ARMISTEAD M. DOBIE,

U. S. Circuit Judge.

On another day, to wit, December 10, 1943, the mandate of this Court, in this cause, is issued and transmitted to The Tax Court of the United States, at Washington, D. C., in due form.

139 Proceedings in the United States Circuit Court of Appeals
for the Fourth Circuit

No. 5123

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

BRITISH ASSETS TRUST, LIMITED, RESPONDENT

On Petition to Review the Decision of The Tax Court of the
United States

June 26, 1943, the transcript of record is filed and the cause
docketed.

Same day, motion for extension of time to transmit record is
filed.

Order extending time for completion and transmission of record

Filed June 26, 1943

(Style of Court and Title Omitted)

Upon motion of Petitioner, by his counsel, and for good cause
shown.

It is ordered that the time for the completion and transmission
of the record on review in this case be, and the same is hereby,
extended from April 17, 1943, to and including July 17, 1943.

April 7th, 1943.

JOHN J. PARKER,
Senior Circuit Judge.

Same day, to wit, June 26, 1943, certified copy of order enlarging
time for the preparation, transmission, and delivery of the record
to April 17, 1943, is filed.

Same day, motion to consolidate is filed.

Same day, order of consolidation is filed.

[Memorandum of Clerk: This order is set out at page 637 of the trans-
cript of record and is, therefore, omitted here.]

June 29, 1943, the appearance of Samuel O. Clark, Jr., Assistant
Attorney General; Sewall Key, Special Assistant to the Attorney
General; J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue,
and John M. Morawski, Special Attorney, Bureau of Internal
Revenue, is entered for the petitioner.

Same day, the appearance of Marion N. Fisher and William H. Harrar is entered for the respondent.

140 September 13, 1943, the appearance of Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, Samuel H. Levy, Helen Goodner and Warren F. Wattles is entered for the petitioner.

Same day, brief on behalf of the petitioner is filed.

Same day, appendix to the brief of the petitioner is filed.

September 28, 1943, brief and appendix on behalf of the respondent are filed.

Argument of cause

October 12, 1943 (October term, 1943), cause came on to be heard, together with Nos. 5122 and 5124, before Parker, Soper and Dobbie, Circuit Judges, and was argued by counsel and submitted.

Opinion

Filed November 8, 1943

[Memo. of Clerk: The opinion is set out at page 6 and is, therefore, omitted here.]

Judgment

Filed and Entered November 9, 1943

United States Circuit Court of Appeals, Fourth Circuit

No. 5123

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

BRITISH ASSETS TRUST, LIMITED, RESPONDENT

On Petition to Review the Decision of The Tax Court of the United States, formerly United States Board of Tax Appeals

This cause came on to be heard on the transcript of the record from The Tax Court of the United States, formerly United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the decision of the said The Tax Court of the

United States, formerly United States Board of Tax Appeals, in this cause, be, and the same is hereby, affirmed.

November 9, 1943.

ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

On another day, to wit, December 10, 1943, the mandate of this Court, in this cause, is issued and transmitted to The Tax Court of the United States, at Washington, D. C., in due form.

141. Proceedings in the United States Circuit Court of Appeals for the Fourth Circuit

No. 5124

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

SECOND BRITISH ASSETS TRUST, LIMITED, RESPONDENT

On Petition To Review the Decision of The Tax Court of the United States

June 26, 1943, the transcript of record is filed and the cause docketed.

Same day, motion for extension of time to transmit record is filed.

Order extending time for completion and transmission of record

Filed June 26, 1943

(Style of Court and Title Omitted)

Upon motion of Petitioner, by his counsel, and for good cause shown,

It is ordered that the time for the completion and transmission of the record on review in this case be, and the same is hereby, extended from April 17, 1943, to and including July 17, 1943.

April 7th, 1943.

JOHN J. PARKER,
Senior Circuit Judge.

Same day, to wit, June 26, 1943, certified copy of order enlarging time for the preparation, transmission and delivery of the record to April 17, 1943, is filed.

Same day, motion to consolidate is filed.

Same day, order of consolidation is filed.

[Memo. of Clerk: This order is set out at page 637 of the transcript of record and is, therefore, omitted here.]

June 29, 1943, the appearance of Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, Special Assistant to the Attorney General; J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and John M. Morawski, Special Attorney, Bureau of Internal Revenue, is entered for the petitioner.

142 Same day, the appearance of Marion N. Fisher and William H. Harrar is entered for the respondent.

September 13, 1943, the appearance of Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, Samuel H. Levy, Helen Goodner and Warren F. Wattles is entered for the petitioner.

Same day, brief on behalf of the petitioner is filed.

Same day, appendix to the brief of the petitioner is filed.

September 28, 1943, brief and appendix on behalf of the respondent are filed.

Argument of cause

October 12, 1943 (October term, 1943), cause came on to be heard, together with Nos. 5122 and 5123, before Parker, Soper, and Doble, Circuit Judges, and was argued by counsel and submitted.

Opinion

Filed November 8, 1943

[Memo. of Clerk: The opinion is set out at page 6 and is, therefore omitted here.]

Judgment

Filed and Entered November 9, 1943

United States Circuit Court of Appeals, Fourth Circuit

No. 5124

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

SECOND BRITISH ASSETS TRUST, LIMITED, RESPONDENT

One Petition to Review the Decision of the Tax Court of the United States, Formerly United States Board of Tax Appeals

This cause came on to be heard on the transcript of the record from The Tax Court of the United States, formerly United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the decision of the said The Tax Court of the United States, formerly United States Board of Tax Appeals, in this cause, be, and the same is hereby, affirmed.

November 9, 1943.

ARMISTED M. DOBIE,

U. S. Circuit Judge.

143 On another day, to wit, December 10, 1943, the mandate of this Court, in this cause, is issued and transmitted to The Tax Court of the United States, at Washington, D. C., in due form.

Clerk's certificate

UNITED STATES OF AMERICA.

Fourth Circuit, ss.

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the appendix to petitioner's brief; appendix to respondents' brief, and the proceedings in the said Circuit Court of Appeals in the therein entitled causes, as the same remain upon the records and files of the said Circuit Court of Appeals, and constitute and is a true transcript of the record and proceedings in the said Circuit Court of Appeals in said causes, made up in accordance with the direction of the Solicitor General of the United States, for use in the Supreme Court of the United States on applications for writs of certiorari.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 3rd day of April, A. D. 1944.

CLAUDE M. DEAN,

Clerk, U. S. Circuit Court of Appeals,

Fourth Circuit.

*Order extending time within which to
apply for a writ of certiorari*

On consideration of the motion of counsel for the petitioner in the above cases, and good cause therefor having been shown, it is ordered that the time within which a petition for a writ of certiorari may be filed herein in behalf of the Commissioner of Internal

Revenue be and the same is hereby extended for a period of 60 days from February 8, 1944.

Dated this 5th day of February 1944.

HARLAN F. STONE,

Chief Justice of the United States.

144

In the Supreme Court of the United States

October Term, 1944

[Title omitted.]

Stipulation as to record

Filed June 19, 1944

It is hereby stipulated and agreed by the above-named parties, through their counsel, that the record filed in this Court with the petition for writs of certiorari may be used in the hearing of this case on the merits. It is further stipulated that any of the parties may refer in briefs and argument to the original transcript of record filed in this Court.

CHARLES FAHY,

Charles Fahy

Solicitor General,

Counsel for Petitioner.

MARIO N. FISHER,

Counsel for Respondents.

JUNE 1944.

145

Supreme Court of the United States

No. 52, October Term, 1944

Order allowing certiorari

Filed May 29, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

146

Supreme Court of the United States

No. 53, October Term, 1944

Order allowing certiorari

Filed May 29, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

147

Supreme Court of the United States

No. 54, October Term, 1944

Order allowing certiorari

Filed May 29, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 220

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED, PETITIONER,

COMMISSIONER OF INTERNAL REVENUE

No. 221

BRITISH ASSETS TRUST, LIMITED, PETITIONER,

COMMISSIONER OF INTERNAL REVENUE

No. 222

SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER,

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JULY 3, 1944

CERTIORARI GRANTED OCTOBER 9, 1944

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 220

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED, PETITIONER,

v. S.

COMMISSIONER OF INTERNAL REVENUE

No. 221

BRITISH ASSETS TRUST, LIMITED, PETITIONER,

v. S.

COMMISSIONER OF INTERNAL REVENUE

No. 222

SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER,

v. S.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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Schedule E

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LTD.

26 Journal Square, Jersey City, New Jersey

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR 1938

GAINS FROM SALES AND EXCHANGES OF SECURITIES

	Description	Year acquired	Amount realized	Cost	Gain
500 shs.	Allied Chemical & Dye Corp.	1931	\$91,700 00	\$56,545 00	\$35,155 00
500 shs.	American Telephone & Tel. Co.	1932	73,000 00	55,312 50	17,687 50
5 shs.	California Packing Corp.	1938	254 38	241 25	13 13
500 shs.	Consolidated Gas, Electric Light & Power Co. of Baltimore	1933	34,100 00	27,625 00	6,475 00
2,000 rts.	Continental Oil Co. of Delaware	1938	531 25	531 25	
1,000 shs.	General Electric Co.	1938	47,125 00	37,800 00	9,325 00
500 shs.	General Motors Corp.	1934	25,750 00	15,250 00	10,500 00
200 shs.	General Telephone Corp.	1935	10,200 00	8,950 00	1,250 00
350 shs.	Great Western Sugar Co.	1929	46,577 50	39,992 50	6,585 00
3,200 shs.	Hiram-Walker Gooderham & Worts, Ltd.	1935	61,525 00	57,700 00	3,825 00
480 shs.	Otis Steel Co.	1936	27,400 00	27,298 99	101 01
4,200 shs.	Owens Illinois Glass Co.	1937	244,725 00	146,781 38	97,943 62
250 shs.	Philip Morris and Co., Ltd.	1936	35,000 00	18,351 35	16,648 65
1,250 rts.	Philip Morris and Co., Ltd.	1938	1,671 88		1,671 88
2,500 rts.	Phillips Petroleum Co.	1938	937 50		937 50
600 shs.	Shell Union Oil Corp.	1931	8,625 00	3,000 00	5,625 00
1,000 shs.	Twin Coach Co.	1936	13,000 00	10,062 50	2,937 50
200 shs.	Wesson Oil & Snowdrift Co., Inc.	1935	16,200 00	15,239 00	970 00
			738,322 51	520,140 47	218,182 04

LOSS FROM SALES AND EXCHANGES OF SECURITIES

	Description	Year acquired	Amount realized	Cost	Loss
\$28,000	Oriental Development Co., Ltd.	1935	\$21,187.50	\$29,830.00	\$8,642.50
\$75,000	Oriental Development Co., Ltd.	1937	43,943.75	69,381.87	25,438.12
\$16,000	Pennsylvania Railroad Co.	1937	12,995.00	18,229.88	5,234.88
\$100,000	Taiwan Electric Power Co., Ltd.	1931	56,592.50	94,218.75	41,626.25
700 shs.	American Bakeries Corp.	1928	20,950.00	32,650.00	11,700.00
250 shs.	American Bakeries Corp.	1929	4,250.00	13,250.00	9,000.00
800 shs.	Anchor Hocking Glass Corp.	1930	88,063.75	88,065.00	661.25
800 shs.	Columbia Gas and Electric Corp.	1930-1931	84,050.00	81,715.00	17,665.00
1,000 shs.	Curtis Publishing Co.	1934	39,998.52	72,000.00	32,001.48
1,100 shs.	Dominion Tar & Chemical Co., Ltd.	1937	6,875.00	8,287.16	1,412.16
1,400 shs.	Hathaway Bakeries, Inc.	1928-1929	6,200.00	62,600.00	56,400.00
500 shs.	Hathaway Bakeries, Inc.	1929	300.00	16,750.00	16,450.00
350 shs.	Hathaway Bakeries, Inc.	1928-1929	11,900.00	38,425.00	26,525.00
2,800 shs.	Interstate Bakeries Corp.	1938	61,505.00	89,532.98	28,027.98
4,000 shs.	Interstate Bakeries Corp.	1938	4,800.00	114,285.20	109,485.20
2,500 shs.	Kennecott Copper Corp.	1929	82,450.00	156,314.62	73,864.62
750 shs.	Langendorf United Bakeries, Inc.	1929	15,000.00	29,250.00	14,250.00
750 shs.	Langendorf United Bakeries, Inc.	1929	3,468.75	28,500.00	25,031.25
1,000 shs.	Pacific Coast Co.	1925	5,008.75	57,312.00	51,703.25
2,200 shs.	Tung Sol Lamp Works, Inc.	1935	6,687.50	27,303.01	20,615.51
8,050 shs.	Western Dairies, Inc.	1925-1929	12,075.00	180,412.98	168,337.98
570 shs.	Western Dairies, Inc.	1928-1929	9,975.00	44,206.86	34,231.86
750 shs.	Wheeling Steel Corp.	1937	18,475.00	32,064.67	13,589.67
1,000 shs.	Gas Utilities Co. (Liquidation)	1928	20,989.00	98,500.00	77,511.00
100 shs.	New England Oil Refining Co. Gen. S. F. "A"				
	8% bonds due 1943	1923	13,517.60	95,000.00	81,482.40

Allowable loss as limited

627,797.62 1,548,644.92 950,887.30
220,182.04

Net loss

732,705.26

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LTD.
26 Journal Square, Jersey City, New Jersey

1939 U. S. CORPORATION INCOME AND EXCESS PROFITS TAX RETURN

GAINS FROM SALES AND EXCHANGES OF SECURITIES

Pair of bonds or number of shares	Name of security	Year acquired	Amount realized	Cost	Gain
1,500 shs.	Allied Chemical & Dye Corp.	1931, 33, 37	\$250,750.00	\$205,255.00	\$45,495.00
1,000 shs.	American Chiclet Company	1934-1936	125,975.00	72,987.50	52,987.50
500 shs.	American Telephone & Telegraph Co.	1933	84,237.50	65,125.00	19,112.50
500 shs.	Bethlehem Steel Corp.	1935	59,775.00	44,972.97	14,802.03
748 shs.	Commercial Credit Company	1934-1936	35,519.50	11,751.02	23,768.48
1,000 shs.	Fisk Rubber Corp.	1934-1935	100,781.25	78,590.00	22,191.25
500 shs.	General Motors Corp.	1934	27,500.00	15,250.00	12,500.00
200 shs.	General Telephone Corp.	1935	10,300.00	8,950.00	1,350.00
2,000 shs.	Greyhound Corp.	1937 and 1938	23,625.00	48,172.00	5,453.00
1,500 shs.	Hackensack Water Co.	1934	46,837.50	38,488.00	8,349.50
1,000 shs.	Inland Steel Co.	1935	95,075.00	87,381.25	7,693.75
1,000 shs.	Liggett & Myers Tobacco Co.	1934-1936	103,100.00	102,675.00	425.00
150 shs.	Melville Shoe Corp.	1935 and 1936	16,950.00	14,599.45	2,350.55
2,000 shs.	Mesta Machine Company	1934-1935	70,962.50	52,750.00	18,212.50
700 shs.	Norfolk & Western Railway Co.	1928	143,700.00	131,700.00	12,000.00
3,000 shs.	North American Company	1939	168,198.54	156,375.00	11,823.54
1,000 shs.	North American Edison Co.	1933, 35, 36	105,000.00	79,423.25	25,576.75
500 shs.	Philip Morris & Co. Ltd.	1936	41,500.00	36,702.70	4,797.30
66 50/75 shs.	Rustless Iron & Steel Corp.	1937	3,012.75	2,566.67	446.08
500 shs.	Sears, Roebuck and Co.	1936	40,500.00	36,800.00	3,700.00
4,100 shs.	Southern California Edison Co., Ltd.	1935	113,000.00	80,812.50	32,187.50
166 shs.	Texas Corporation	1937	7,835.25	6,640.00	1,195.25

Schedule "F"

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LTD.
26 Journal Square, Jersey City, New Jersey
1939 U. S. CORPORATION INCOME AND EXCESS PROFITS TAX RETURN

GAINS FROM SALES AND EXCHANGES OF SECURITIES				
Par of bonds or number of shares	Name of security	Year acquired	Amount realized	Cost
1,000 shs.	United Shoe Machinery Corp.	1927	84,856.25	45,146.06
600 shs.	Westinghouse Electric Manufacturing Co.	1933	70,150.00	39,217.50
500 shs.	William Wrigley, Jr., Co.	1934	40,000.00	32,937.50
				Gain
				39,710.19
				30,932.50
				7,062.50
				404,172.67

LOSSES FROM SALES AND EXCHANGES OF SECURITIES				
				Loss
800,000	Compania Azucarera Viena	1936	22,250.00	\$29,538.48
835,000	O'Gara Coal Company	1912	2,887.50	27,300.00
850,000	United Railways Co. of St. Louis	1926	12,250.00	41,750.00
836,000	Victor Fuel Company (Denver, Col.)	1910	14,985.00	31,684.34
2,500 shs.	American Can Company	1930-1932	226,287.50	289,950.00
400 shs.	American Pneumatic Service Co.	1912	5,000.00	20,146.81
500 shs.	American Rolling Mill Company	1937	39,375.00	50,550.00
				11,175.00

100 shs.	American Sugar Refining Co.	1928	\$8,600.00	\$10,785.00
500 shs.	American Woollen Company	1934	31,300.00	39,825.00
500 shs.	California Packing Corp.	1928	9,875.00	36,887.50
1,920 shs.	Chesapeake Corp.	1935 and 1938	58,291.50	58,650.40
1,200 shs.	Columbia Gas & Electric Corp.	1928 and 1930	96,000.00	127,525.00
6,000 shs.	Compania Azucarera Viena	1923	2,593.75	18,461.52
				82,185.00
				8,525.00
				27,012.50
				358.90
				31,525.00
				13,807.77

500 shs.	General Cable Corp.	1928	15,237.50	36,587.50	21,350.00
500 shs.	Gillette Safety Razor Co.	1932	22,500.00	32,462.50	9,962.50
2,000 shs.	Glen Alden Coal Co.	1934	15,875.00	46,062.50	30,187.50
500 shares	Montgomery Ward & Company	1936	28,050.00	28,832.00	782.00
1,000 shares	Mt. Vernon Woodberry Mills, Inc.	1927	50,003.13	98,029.45	48,026.32
1,300 shares	The National Supply Co. (Pa.)	1937	21,450.00	31,571.75	10,124.75
400 shares	Otis Steel Company	1936	19,612.50	22,749.20	3,136.70
2,000 shares	Penitron Corp.	1939	4,750.00	50,000.00	25,250.00
1,500 shares	Pullman Inc.	1927-1929	57,712.50	122,035.00	64,322.50
500 shares	Pulse Oil Company	1927	5,250.00	16,028.12	10,778.12
500 shares	Remington-Rand Inc.	1935-1936	28,312.50	31,895.27	3,582.77
556 shares	St. Louis Public Service Co.	1905	1,375.00	45,925.00	44,550.00
1,000 shares	South Penn Oil Company	1928	37,237.50	44,087.50	6,850.00
1,200 shares	Standard Frack Fund Inc.	1929	19,224.00	50,400.00	31,176.00
4,000 shares	Standard Brands Inc.	1928-1929	24,025.00	138,050.00	114,025.00
900 shares	Texas Gulf Sulphur Co.	1929	33,650.00	50,457.50	17,807.50
1,100 shares	United Fruit Company	1930	19,850.00	108,486.96	16,636.96
256 shares	U. S. Smelting, Refining & Mining Co.	1934	13,281.25	32,503.25	19,222.00
2,000 shares	United States Steel Corp.	1936 and 1937	91,137.50	153,997.50	62,860.00
2,500 shares	Verinetes-Camaguey Sugar Co.	1937	4,212.50	48,500.00	44,287.50
400 shares	Victor Monaghan Co.	1923	19,800.00	45,514.00	25,714.00
500 shares	Western Dairies Inc.	1928 and 1929	8,225.00	38,777.97	30,552.97
500 shares	Westinghouse Air-Brake Co.	1936	18,012.50	21,700.00	3,687.50
1,000 shares	Wilson and Co. Inc.	1935 and 1937	50,800.00	61,525.50	10,725.50

929,457.49
406,472.67

523,284.82

Allowable Loss as limited

Net Loss

Schedule "F"

BRITISH ASSETS TRUST, LTD.

26 Journal Square, Jersey City, N. J.

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR CALENDAR YEAR 1938

GAIN ON SALE OR EXCHANGE OF SECURITIES

	Description	Date acquired	Amount realized	Cost	Gain
\$1,000	Mead Corp. 1st Mfg. A 6s	1932	\$1,020 00	\$451 21	\$568 79
500 shs	Air Reduction Co.	1931	25,200 00	16,375 00	8,825 00
500 shs	Amer. Telephone & Telegraph	1933	74,000 00	62,700 00	11,300 00
500 shs	Amer. Tobacco Co. "B"	1932	41,500 00	36,031 25	5,468 75
10 shs	Bon Ami Co. "A"	1937	800 00	888 75	1 25
500 shs	Liggett & Myers Tobacco Co. "B"	1930	50,425 00	50,891 50	33 50
285 shs	Peninsular Telephone Co. Pfd.	1925 30	31,430 00	29,017 20	2,412 80
2,000 shs	Southern California Edison Pfd.	1924	54,000 00	48,654 32	5,345 68
150 war	Combustion Engineering Co., Inc.	1934	2,156 12		2,156 12
2,000 rts	Continental Oil Co. "	1938	531 25		531 25
1,072 rts	Phillips Petroleum Co.	1938	398 50		368 50
Gain (Item 11 (a) of return)			284,270 87	244,509 43	39,761 44

LOSS ON SALE OR EXCHANGE OF SECURITIES

			Loss
\$100,000	Continues Power & Light Deb. 5s	1936	\$74,502 50
1,250 shs	Amer. Bakeries Corp. "A"	1927	57,625 00
250 shs	Amer. Bakeries Corp. "B"	1929	8,250 00
500 shs	Anaconda Copper Mining Co.	1937	33,150 00
20 shs	Bridgport Machine Co.	1937	4,780 00
			171,207 50

1,000 shx	General Motors	1936	32,250 00	42,368 75	10,118 75
300 shx	Greyhound Corp. Pfd.	1937	2,337 50	2,475 00	137 50
1,300 shx	Hathaway Bakeries Corp.	1928-29	3,900 00	59,025 00	55,125 00
1,000 shx	Humble Oil & Refining Co.	1935-37	64,450 00	71,670 00	7,220 00
1,500 shx	Interstate Bakeries Corp.	1937	1,525 00	15,227 10	13,702 16
700 shx	Interstate Bakeries Corp. Pfd.	1937	15,750 00	41,491 84	25,741 84
500 shx	Kennecott Copper Corp.	1929	19,125 00	44,503 51	25,378 51
300 shx	Langendorf United Bakeries "A"	1938	5,600 00	11,329 61	5,729 61
56 shx	Langendorf United Bakeries Pfd.	1938	2,114 00	4,270 39	2,156 39
400 shx	Langendorf United Bakeries "B"	1938	2,200 00	15,200 00	13,000 00
1,700 shx	Rhode Island Public Service Pfd.	1929	46,537 50	51,170 00	4,632 50
1,000 shx	U. S. Steel Corp.	1938	45,750 00	75,165 00	29,415 00
500 shx	do	1936	28,625 00	37,582 50	8,957 50
2,000 shx	F. W. Woolworth Co.	1936	75,437 50	110,170 50	34,733 00
			479,355 46	761,984 66	282,629 20
	Allowable Loss as limited (Item 23 of Return)				41,761 44

Schedule "E"

BRITISH ASSETS TRUST, LTD.
26 Journal Square, Jersey City, New Jersey

1939 U. S. CORPORATION INCOME AND EXCESS PROFITS TAX RETURN

GAINS FROM SALES AND EXCHANGES OF SECURITIES

Pair of bonds
or number
of shares

Security	Year acquired	Amount realized	Cost	Gain
Air Reduction Co., Inc.	1931	\$74,850.00	\$19,125.00	\$25,725.00
Alabama Power Company	1938, 1939	43,562.50	37,400.00	5,862.50
American Chicle Co.	1931	338,550.00	136,450.00	202,100.00
American Locomotive Company	1934	35,325.00	34,237.50	1,087.50
American Telephone & Telegraph Co.	1933	158,800.00	128,750.00	31,050.00
Anchor Hocking Glass Corp.	1931	109,112.50	91,989.90	17,122.60
Bethlehem Steel Corporation (Del.)	1935 and 1939	17,500.00	14,350.61	3,149.39
Bethlehem Steel Corporation (Del.)	1935 and 1939	174,287.50	148,894.39	25,393.11
Bar Ami Company	1937	114,130.00	86,000.00	28,130.00
Celanese Corp. of America	1934	54,050.00	48,667.50	5,382.50
Chesapeake Corp.	1930, 1931	238,312.50	235,850.00	2,462.50
Continental Can Company, Inc.	1931, 1934, 1936	65,712.50	61,025.00	4,687.50
Firestone Tire & Rubber Co.	1935	56,340.00	47,370.00	2,930.00
Fisk Rubber Corp.	1934	43,690.63	39,840.10	3,250.53
Food Machinery Corp.	1935	46,550.00	38,650.50	7,899.50
General Mills, Inc.	1928, 1929, 1932	41,425.00	30,000.08	11,424.92
Georgia Power Company	1938	92,462.50	82,775.00	9,687.50
Goodyear Tire & Rubber Co.	1930	11,333.22	8,600.07	2,733.15
Goodyear Tire & Rubber Co.	1930	93,912.50	91,582.43	2,330.07
Great Western Sugar Company	1930	136,000.00	117,575.00	18,425.00
Greenwood Corporation	1936	97,885.50	74,395.00	23,492.50
Gulf States Utilities	1930	101,750.00	100,000.00	1,750.00

500 shs.	Jersey Central Power & Light Co.	1935	14,675 00	36,667 50	8,007 50
250 shs.	Kentucky Utilities Company	1938	23,337 50	20,118 50	3,219 00
2,000 shs.	Liggett & Myers Tobacco Co.	1930-1931	198,200 00	174,787 50	23,412 50
500 shs.	Louisiana Power & Light Co.	1935	48,250 00	40,520 00	7,730 00
500 shs.	Northern Indiana Public Service Co.	1925	49,250 00	46,875 00	2,375 00
377 400 War	Purchase Eastern Pipe Line Co.	1939	43 16		133 16
1,000 shs.	Public Service Co. of Colorado	1932	87,000 00	55,900 00	31,100 00
250 shs.	Public Service Co. of Oklahoma, Inc.	1931	25,250 00	24,875 00	375 00
1,000 shs.	Southern California Edison Co.	1925-1926	29,680 00	25,257 58	4,422 42
1,000 shs.	Tennessee Electric Power Co.	1938	95,000 00	68,937 50	26,062 50
1,500 shs.	United Shoe Machinery Corp.	1931	111,059 37	84,840 05	26,219 32

572,012 17

LOSSES FROM SALES AND EXCHANGES OF SECURITIES

8400,000	United Cigar-Whelan Stores Corp.	1938	\$67,750 00	\$76,250 00	\$8,500 00
200 shs.	Allegheny Corporation	1929	3,637 00	20,104 80	16,467 80
500 shs.	Allied Stores Corporation	1929	4,687 50	5,225 00	537 50
205 shs.	Allied Stores Corporation	1929 and 1937	13,120 00	21,019 69	7,899 69
1,500 shs.	American Can Co., Inc.	1931	163,500 00	166,500 00	2,700 00
4,000 shs.	American Home Products Corp.	1931	193,750 00	197,030 10	3,280 10
1,500 shs.	Anaconda Copper Mining Co.	1937	49,312 50	83,062 50	33,750 00
1,000 shs.	Borden Co., Inc.	1931	20,775 00	39,275 00	18,500 00
240 shs.	California Packing Corporation	1937 and 1938	11,065 00	12,030 00	965 00
676 shs.	Celanese Corp. of America	1928 and 1936	69,748 25	73,543 16	3,794 91
1,000 shs.	Central Power & Light Co., Inc.	1931	90,375 00	96,000 00	5,625 00
128 shs.	Chesapeake & Ohio Railway Co.	1937	10,124 00	11,151 00	1,027 00
1,000 shs.	Columbia Gas & Electric Corp.	1931 and 1936	79,850 00	100,698 50	20,848 50
63,500 100 shs.	Consolidated Oil Corporation	1937 and 1939	4,789 63	9,758 79	4,969 16
1,000 shs.	Curtis Publishing Co.	1934	44,750 00	65,375 00	20,625 00
1,000 shs.	Gannett Company	1930	83,250 00	96,400 00	13,150 00
3,000 shs.	General Foods Corporation	1929-1931	124,050 00	153,500 00	29,450 00
250 shs.	Hathaway Bakeries, Inc.	1928 and 1929	7,062 50	28,150 00	21,087 50
200 shs.	Hershey Chocolate Corp.	1931	11,000 00	16,240 00	4,640 00
563 shs.	Insurance Co. of North America	1930	36,693 63	44,971 50	8,277 87
500 shs.	Interchemical Corporation	1937	51,656 25	53,020 00	1,363 75

Par of Bonds
or number
of shares

Security	Year acquired	Amount realized	Cost	Loss
International Paper & Power Co.	1937	21,400 00	22,225 00	825 00
Laggett & Myers Tobacco Co.	1936	48,500 00	53,005 00	4,505 00
Liquid Carbonic Corp.	1928 1929 1937	62,912 50	176,370 00	113,457 50
Loose Wiles Biscuit Co.	1931	51,925 00	153,612 50	101,617 50
National Biscuit Co.	1928 and 1931	23,112 50	75,375 00	52,262 50
National Dairy Products	1932	44,287 50	71,480 00	26,892 50
National Radiator Corp.	1927	98,250 00	125,912 50	27,662 50
Norfolk & Western Railway Co.	1930	141,700 00	163,140 00	21,440 00
North American Company	1935 and 1936	9,758 79	15,050 00	5,291 21
Pierce Petroleum Corp.	1924	58,412 50	194,375 00	135,962 50
Purity Bakeries Corp. Inc.	1930 and 1931	14,250 00	29,039 45	14,789 45
Radio Corporation of America	1931 and 1936	71,750 00	73,535 55	1,785 55
Radio Corporation of America	1936	23,438 33	36,391 05	12,952 72
Remington Rand, Inc.	1931 1936 1937	21,413 75	105,686 50	84,242 75
Snider Packing Corp.	1925 1926	5,116 57	5,110 81	9,644 24
Standard Oil Co. of N. J.	1938 1939	58,600 00	63,670 00	5,070 00
United States Steel Corp.	1936	16,800 00	51,541 50	37,711 50
Western Union Telegraph Co.	1936	78,500 00	78,950 00	450 00
Wm. Wrigley, Jr. Co.	1931			

Allowable Losses Limited

921,694 23
574,012 17

Net Loss

347,679 03

Schedule E

SECOND BRITISH ASSETS TRUST, LTD.
26 Journal Square, Jersey City, N. J.

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR 1938

GAINS FROM SALES AND EXCHANGES OF SECURITIES

Description	Date acquired	Amount realized	Cost	Gain
Mead Corp.—1st Mortgage "A" 6's	1930	\$8,160.00	\$7,644.60	\$515.40
American Smelting & Refining Co.	1926	104,225.00	97,618.85	6,606.15
American Telephone & Telegraph Co.	1933	66,500.00	66,359.38	140.62
Chicago Dist. Elec. Generating Co.—Pfd.	1931	107,500.00	96,783.33	10,716.67
Union Carbide & Carbon Corp.	1931	71,400.00	64,721.86	6,678.14
Commonwealth Edison Co.		670.14		670.14
Commonwealth Edison Co.		135.36		315.36
Commonwealth Edison Co.		657.00		957.00
Gain (from 11 (a) of return)		359,427.50	333,128.02	26,299.48

LOSS FROM SALES AND EXCHANGES OF SECURITIES

Description	Date	Loss
American Cyanamid "B"	1936	\$25,537.50
Caterpillar Tractor Co.	1931	75,837.50
Caterpillar Tractor Co.—Pfd.	1937	6,000.00
General Steel Castings Corp.—Pfd.	1936	13,008.75
Rhode Island Public Services—Pfd.	1930	30,000.00
Western Newspaper Union, Inc.—Pfd.	1938	312.00
Loss		150,695.75
Available Loss as limited		26,299.48

Schedule "E"

SECOND BRITISH ASSETS TRUST LTD.

26 Journal Square, Jersey City, New Jersey.

1939 U. S. CORPORATION INCOME AND EXCESS PROFITS TAX RETURN

GAINS FROM SALES AND EXCHANGES OF SECURITIES

Par of bonds or number of shares	Security	Year acquired	Amount realized	Cost	Gain-
\$4,000	Mead Corporation	1930	\$1,080 00	\$3,822 30	\$2,770 70
\$50,000	New Orleans Public Service Inc.	1938	17,500 00	41,250 00	6,250 00
\$25,000	Southern Natural Gas Co.	1930	23,937 50	23,634 77	302 73
500 shs.	American Home Products Corp.	1932	24,000 00	23,426 42	573 58
300 shs.	American Telephone & Telegraph Co.	1932	18,950 00	39,845 62	9,134 38
1,000 shs.	Brewster Aeronautical Co.	1937	11,362 58	5,500 00	5,862 58
300 shs.	Celacese Corp. of America	1935	31,514 25	29,460 00	2,051 25
5,000 rts.	Commonwealth Edison Co.	1939	750 00		750 00
1,000 shs.	Consolidated Gas Electric Light & Power Co. of Baltimore	1933	77,250 00	55,250 00	22,000 00
4,500 shs.	Differential Wheel Corp.	1939	52,962 50	43,541 60	9,420 90
1,250 shs.	Eastman Kodak Co.	1931	214,150 00	205,750 00	8,400 00
1,000 shs.	General Foods Corp.	1932	39,712 50	36,775 00	2,937 50
480 shs.	Great Western Sugar Co.	1925	65,280 00	55,060 12	10,210 88
1,050 shs.	Inland Steel Co.	1935 and 1937	94,393 75	66,575 00	24,818 75
1,000 shs.	McCormick Stores Corp.	1931	99,125 00	90,436 80	8,688 20
1,000 shs.	New Orleans Public Service Inc.	1931	116,000 00	106,525 37	14,474 63
1,000 shs.	Ohio Public Service Co.	1931	109,275 00	96,583 50	3,691 50
250 shs.	Public Service Co. of Oklahoma Inc.	1930	27,062 50	23,750 00	1,312 50
520 30 400 shs.	Remington Rand, Inc.	1935 and 1937	5,850 80	4,466 83	1,383 97
750 shs.	Southwestern Gas & Electric Co., Inc. (Del.)	1931	78,750 00	73,125 00	5,625 00

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Par^a of bonds
or number
of shares

LOSSES FROM SALES AND EXCHANGES OF SECURITIES

Security	Year acquired	Amount realized	Cost	Loss
American Bakeries Corp.	1928	\$9,100.00	\$10,400.00	\$1,300.00
American Tobacco Co., Inc.	1930	113,625.00	156,500.00	42,875.00
Borden Company	1926-1931	107,531.25	287,738.64	180,207.39
Boston Edison Co.	1925 and 1927	87,535.90	124,988.54	37,453.64
Hunter Steel Co.	1936	24,625.00	35,018.92	10,393.92
Interstate Bakeries Corp.	1937	37,225.00	78,563.10	41,338.10
Pittsburgh Coke & Iron Co.	1939	24.00	24.62	.62
Postal Telegraph & Cable Corp.	1929		102,500.00	102,500.00
Public Service Co. of Oklahoma Inc.	1930	47,297.80	48,750.00	1,452.50
Remington Rand, Inc.	1935 and 1938	74,029.30	78,401.32	4,372.02
Standard Oil Co. of New Jersey	1936	6.83	9.13	2.30
United Fruit Co.	1927-1929	44,703.12	57,475.00	12,771.88
U. S. Smelting, Refining & Mining Co.	1935	34,000.00	59,093.82	28,093.82
U. S. Steel Corp.	1936	47,200.00	50,353.60	3,153.60
West Texas Utilities Co.	1930-1931	90,000.00	95,250.00	5,250.00
F. W. Woolworth Co.	1931	26,987.50	45,306.63	18,319.13
				489,483.82
				180,905.02
				308,578.80

Allowable Loss as Limited

Net Loss

Tennessee Electric Power Co.
Union Premier Food Stores Corp.
U. S. Smelting, Refining & Mining Co.
U. S. Steel Corp.

1938 47,500.00 33,063.75 14,836.25
1938 32,112.50 27,000.00 5,112.50
1931 65,300.00 44,747.70 20,552.30
1936 37,250.00 33,992.08 3,257.92
178,905.02

[fol. 133] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

B. T. A. 108441. C. C. A. No. 8337

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner on Review,

v.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
Respondent on Review.

B. T. A. 108442 C. C. A. No. 8338

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner on Review,

v.

BRITISH ASSETS TRUST, LIMITED, Respondent on Review.

B. T. A. 108440 C. C. A. No. 8339

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner on Review,

v.

SECOND BRITISH ASSETS TRUST, LIMITED, Respondent on
Review.

Before JONES and GOODRICH, Judges.

Order.

Now on consideration of the joint motion filed herein by counsel for the respective parties to the above-entitled proceedings, it is

Ordered, that the Clerk of The Tax Court of the United States shall certify and transmit to this Court a single consolidated transcript of record on review in the above-entitled proceedings; and that these proceedings be and they are hereby consolidated for briefing, hearing, argument and decision.

It is further ordered that the Clerk of this Court transmit to the Clerk of The Tax Court of the United States a certified copy of this order to be by him incorporated in the

[fol. 134] record on review as certified and transmitted by him to this Court.

Done at Philadelphia, Pennsylvania, this 28th day of May, A. D., 1943.

By the Court, Jones, Judge, United States Circuit Court of Appeals for the Third Circuit.

Endorsements: Order to Consolidate Cases Received & Filed May 28, 1943. Wm. P. Rowland, Clerk.

[fol. 135] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 8337

October Term, 1943.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

VS.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

No. 8338

October Term 1943.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

VS.

BRITISH ASSETS TRUST, LIMITED

No. 8339

October Term 1943.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

VS.

SECOND BRITISH ASSETS TRUST, LIMITED

And afterwards, to wit, the 21st day of October, 1943, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Charles Alvin Jones, Honor-

able Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 6th day of April, 1944, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 136] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8337

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, Limited

No. 8338

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

BRITISH ASSETS TRUST, Limited

No. 8339

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

SECOND BRITISH ASSETS TRUST, Limited

On Petitions to Review the Decisions of the United States
Board of Tax Appeals

Before Jones, Goodrich and McLaughlin, Circuit Judges

OPINION OF THE COURT—Filed April 6, 1944

[fol. 137] By McLAUGHLIN, Circuit Judge:

These are companion cases and were argued together. The respondent companies are British corporations. The question is: whether they were engaged in trade or business or had an office or place of business within the United States

in the taxable years 1938 and 1939 so as to qualify within the meaning of Section 231 (b) of the Revenue Act of 1938 and of the Internal Revenue Code, as resident foreign corporations. The section reads:

"(b) Resident Corporation.—A foreign corporation engaged in trade or business within the United States or ~~having~~ an office or place of business therein shall be taxable as provided in section 14 (c) (1)."

Treasury Regulations 101, Article 231—1, with respect to the above section, is as follows:

"As used in section 231, section 119, section 143, section 144, and section 211, the phrase 'engaged in trade or business within the United States' includes the performance of personal services within the United States at any time within the taxable year. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities (including hedging transactions) through a resident broker, commission agent, or custodian."

"Whether a foreign corporation has an 'office' or place of business within the United States depends upon the facts in a particular case. The term 'office or place of business,' however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected."

The corresponding Revenue Act section and Treasury Regulations for 1939 are substantially the same.

The problem here presented is one of law, namely, ~~whether, on the facts, these companies are entitled to be~~ classified as resident foreign corporations under the Internal Revenue Code. *Sep. Dobson vs. Commissioner*, 320 U. S. 486.

[fol. 138] The three corporations are of the same type and admittedly, investment trusts. The Board found each of them "is engaged in the business of investing the funds of its security holders for the primary purpose of deriving income from investment." The home offices of the companies are in Edinburgh, Scotland. Up to 1936, they had made no pretense of either doing business in, or having an office in, this country. All three of them had then and have now,

heavy holdings in United States securities. Prior to 1936, Scottish had made profits in the sales of such securities here. The question of income taxes arose and that company engaged the accounting firm of Barrow, Wade, Guthrie & Company of New York City, to make an audit. Following the audit, Scottish paid taxes for the years 1927 to 1934 inclusive, in excess of a million dollars, plus interest of \$220,000. Thereafter there were various discussions among the three companies as to the establishment of a United States office. On December 2, 1936 they appointed Walter Cooper, C. P. A., of New York, a partner in the above named accounting firm, as assistant secretary of all three companies. Cooper, acting for the companies, immediately obtained two rooms in the New York building where his accounting firm had offices, and on the next floor below. Each taxpayer had a separate lease for part of the two rooms. There was a telephone there which went through the accountants' switchboard. Cooper continued his partnership with the accounting firm. It is conceded that every partner of that concern who earned outside income was required by the partnership to turn over such income to the firm. Cooper left Barrow, Wade, Guthrie & Company on October 31, 1940. Shortly thereafter, he resigned as assistant secretary of the taxpayers. Employees of the accountants were active in the installation of a bookkeeping system, and making current records, in December 1936. From February 1938 through 1939 Henry A. Jeffers, an employee of Barrow, Wade, Guthrie and Company, supervised the activities of the office.

[fol. 129] The office eventually was moved to New Jersey. There it consisted of one large room with a corner partitioned off as a private office. There were two telephones, one directly to the accounting firm and one outside line. The Tax Board found that the taxpayers established this United States office, in part at least, "to gain certain tax advantages." Eventually that office collected and deposited dividends on stocks owned by the companies in the United States, maintained full bookkeeping records re transactions in the United States, transmitted to the home offices in Scotland corporate data and information regarding developments in this country, including statistics from the Federal Reserve Bank and the New York Times, prepared income tax returns and paid local office expenses.

Prior to the opening of the office, the actual purchases and sales of the taxpayers' United States securities had been made by brokers and the custodian banks. The securities themselves had always been in the possession of J. P. Morgan & Co. and the National City Bank, for the taxpayers. These identical conditions continued after the opening of the office. The only part the office had to do with purchases and sales was the recording of such transactions after notification that they had been accomplished. Such transactions by the brokers and the banks do not constitute engaging "in trade or business within the United States" being specifically excluded by Section 211 (b) of the Revenue Act of 1938 which reads:

"Such phrase (engaged in trade or business within the United States) does not include the effecting of transactions in the United States in stocks, securities or commodities through a resident broker, commission agent or custodian."

The record clearly shows that the only real business of the corporations, namely, the investment business, consisting of the purchase and sale of securities with a view of disposing of unsatisfactory shares and reinvesting in others, was carried on in Edinburgh through the three [fol. 140] boards of directors. They did everything of any importance in connection with these concerns, and it was as a result of their efforts that the income of the companies was produced. The so-called United States office functioned solely on routine matters. Most of these services had formerly been performed for the taxpayers by the custodian banks. The detail was extensive, of necessity, for the companies had millions invested in this country. That, however, gives no sound basis for finding that the United States office was the place for the regular transaction of the investment business of the corporations. The policy, management, buying and selling, were dictated from abroad. The actual buying and selling and custody of the securities were ~~now~~ always, handled by the brokers and custodian banks. With no real dispute as to the facts, the problem here resolves itself as to just what is meant by the language of Treasury Regulation 231 (1) defining such office or place of business as one implying "a place for the regular transaction of business and does not include a place where casual or incidental transactions might be or are effected." The

Regulations, under almost identical facts, was passed upon in *Linen Thread Co. v. Commissioner*, 128 F. 2d 166, (C. C. A. 2), certiorari denied, 317 U. S. 673. In that case the agent of the foreign corporation received the dividends from the company's investments in the United States together with interest due from an American subsidiary; deposited the money so received in a New York bank; paid the rent and taxes; and remitted the balance to the foreign corporation at Glasgow. The agent also filed federal and state tax returns and looked after petitioner's investments and any changes in the general business or in products or material which would affect the company, which was a manufacturing concern. The agent had a room in an office building with the lease naming the company as tenant. There were never any official meetings of directors or officers of the concern at that office in New York City. The court held on page 169:

[fol. 141] "The findings show that the petitioner had neither an office nor a place of business in the United States which would come within the statutory provisions as explained by the regulations.

"We cannot, therefore, give effect to the regulations and at the same time subscribe to the petitioner's argument that there is such a statutory contrast between 'office' and 'place of business' as used in the phrase 'office or place of business' in Section 231 (b) of the 1938 Act that the maintenance of an office which was not used or kept for the transaction of the petitioner's ordinary business would entitle this foreign corporation to be taxed as a resident.

To the same effect, *Aktieblaszet Separator vs. Commissioner*, 45 B. T. A. 243, affirmed per curiam, 128 F. 2d, 739, (C. C. A. 2), certiorari denied, 317 U. S. 661.

In *B. W. Jones Trust vs. Commissioner*, 132 F. 2d 914, (C. C. A. 4), the petitioners were a group of British trusts with approximately 90% of the funds being in American securities. There were four trustees, one of whom was a citizen of the United States. The trusts maintained an office in New York City in the name of the four trustees; all American securities were kept in a safety deposit box in a New York bank in the name of the four trustees. The American trustee and one of the three British trustees had control of the trust property and the British

trustee made semi-annual trips to the United States at which time he and his American colleague would go over the securities, decide which would be sold, which held, etc. The sales and purchases of the securities were in the hands of the American trustee. The court found that the trust maintained an office "for handling *all* (italics ours) business connected with the trust" and, therefore, that the trusts were not in a position to deny that they maintained an office within the United States.

Here we have an office set up by foreign corporations, in part at least, for the purpose of obtaining a favorable tax result. If the office were bona fide in the sense that it functioned truly on the one business of the taxpayers, this [fol. 142] element would be of no consequence. Where, under the uncontradicted facts, the business of that office had only to do with the unimportant collateral detail, voluminous though such might be, we do not think that the taxpayers, directly running their own business from abroad, through brokers and custodian banks, are justified in their present contention. It seems to us that both the Linen Thread and the Jones Trust decisions strongly support this view.

The decisions of the Board of Tax Appeals are reversed.

A true Copy. Teste:

_____, Clerk of the United States Circuit Court
of Appeals for the Third Circuit.

[fol. 143] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8335

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, Respondent

Present: Jones, Goodrich and McLaughlin, Circuit Judges.

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the

said Board of Tax Appeals in this cause be, and the same is hereby reversed.

By the Court, Gerald McLaughlin, Circuit Judge.

April 6, 1944.

Endorsements:

Order Reversing Decision of the Board of Tax Appeals
Received & Filed Apr. 6, 1944. Wm. P. Rowland, Clerk.

[fol. 144] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8338

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

BRITISH ASSETS TRUST, LIMITED, Respondent

Present: Jones, Goodrich and McLaughlin, Circuit Judges.

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby reversed.

By the Court, Gerald McLaughlin, Circuit Judge.

April 6, 1944.

Endorsements:

Order Reversing Decision of the Board of Tax Appeals
Received & Filed Apr. 6, 1944. Wm. P. Rowland, Clerk.

[fol. 145] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8339

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

SECOND BRITISH ASSETS TRUST, LIMITED, Respondent

Present: Jones, Goodrich and McLaughlin, Circuit Judges.

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby reversed.

By the Court, Gerald McLaughlin, Circuit Judge.

April 6, 1944.

Endorsements:

Order Reversing Decision of the Board of Tax Appeals
Received & Filed Apr. 6, 1944 Wm. P. Rowland, Clerk.

[fol. 146] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, Set:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original Appendices to Briefs of Petitioner and Respondents, as constituting the portions of the record before this court at argument; and proceedings in this court in the cases of Commissioner of Internal Revenue, Petitioner, vs. Scottish American Investment Company, Limited, No. 8337; Commissioner of Internal Revenue, Petitioner, vs. British Assets Trust, Limited, No. 8338; and Commissioner of Internal Revenue, Petitioner, vs. Second British Assets Trust, Limited, No.

8339, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 18th day of April in the year of our Lord one thousand nine hundred and forty-four and of the Independence of the United States the one hundred and sixty-eighth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

(1738)

[fol. 144] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1944

No. 220

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket and assigned for argument immediately following No. 54.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 145] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1944

No. 221

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket and assigned for argument immediately following No. 54.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 146] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1944

No. 222

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket and assigned for argument immediately following No. 54.

— 220 221 222 —

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 147], SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

STIPULATION AS TO RECORD—Filed October 21, 1944

It is stipulated and agreed by and between the parties to the above-entitled cases, through their counsel, that the [fol. 148] transcript of the record in the above-entitled cases may be printed as a part of or as a supplement to the transcript of the record in Commissioner of Internal Revenue vs. Scottish American Investment Company, Limited; Commissioner of Internal Revenue vs. British Assets Trust, Limited; and Commissioner of Internal Revenue vs. Second British Assets Trust, Limited, Docket Nos. 52, 53 and 54, October Term, 1944, and shall include only the following documents and proceedings:

(a) The following documents and proceedings appearing in record filed in this court with petitions for writs of certiorari:

- (1) Exhibit I (Tr. 67-68).
- (2) Exhibit J (Tr. 69-70).
- (3) Exhibit M (Tr. 71).
- (4) Exhibit N (Tr. 72-73).
- (5) Exhibit Q (Tr. 74).
- (6) Exhibit R (Tr. 75-76).
- (7) Proceedings in Circuit Court of Appeals for Third Circuit (Tr. 133-143).

(b) Orders of this Court entered October 9, 1944, allowing writs of certiorari.

(c) This stipulation.

Dated October 16, 1944.

Marian N. Fisher, Counsel for Petitioners.

Oct. 19 44.

Charles Fahy, Solicitor General, Counsel for Respondent.

Nos. 869-871

52-54

In the Supreme Court of the United States

OCTOBER TERM, 1943

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.
THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.
BRITISH ASSETS TRUST, LIMITED

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.
SECOND BRITISH ASSETS TRUST, LIMITED

PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH
CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 869

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED

No. 870

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

BRITISH ASSETS TRUST, LIMITED

No. 871

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

SECOND BRITISH ASSETS TRUST, LIMITED

PETITION FOR WRITS OF CERTIORARI, TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH
CIRCUIT

The Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that writs of certiorari issue to review the judgments of the Circuit Court of Appeals for the Fourth Circuit,

entered in the above cases on November 8, 1943, affirming the decisions of the Board of Tax Appeals.

OPINIONS BELOW

The opinion of the Board (R. 76-92) is reported in 47 B. T. A. 474. The opinion of the Circuit Court of Appeals (R. 133-137) is reported in 139 F.2d 419.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on November 9, 1943 (R. 138, 140, 142). On February 5, 1944, the Chief Justice signed an order extending the time within which a petition for certiorari might be filed for sixty days from February 8, 1944 (R. 143). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayers had an office or place of business within the United States in the taxable years 1936 and 1937 so as to qualify as resident foreign corporations within the meaning of Section 231 (b) of the Revenue Act of 1936 and Article 231-1 (b) of Treasury Regulations 94.

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

* * * * *

(b) *United States Business or Office.*—

* * * As used in this section, section 119, section 143, section 144, and section 231, the phrase “engaged in trade or business within the United States” includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian.

SEC. 231. TAX ON FOREIGN CORPORATIONS.

(b) *Resident Corporations.*—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a), but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

ART. 231-1. *Taxation of foreign corporations.*—

(b) *Resident foreign corporations.*—

As used in section 231, section 119, section 143, section 144, and section 211, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities (including hedging transactions) through a resident broker, commission agent, or custodian.

Whether a foreign corporation has an "office or place of business" within the United States depends upon the facts in a particular case. The term "office or place of business," however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.

STATEMENT

The Scottish American Investment Company, Limited, British Assets Trust, Limited, and Second British Assets Trust, Limited, are corpora-

trons organized under the laws of Great Britain and have their principal offices in Edinburgh, Scotland. They are engaged in the business of investing the funds of their security holders for the primary purpose of deriving income from investment. (R. 78.) Their boards of directors met frequently in Edinburgh. The two British Assets trusts were managed, as is customary in the case of investment trusts in England and Scotland, by a firm of secretaries engaged in the business of management. (R. 78-79.)

On December 2, 1936, the taxpayers had in excess of \$40,000,000 invested in securities in the United States (R. 78). Prior to 1936, the accounting firm of Barrow, Wade, Guthrie & Company, of which Walter A. Cooper was a partner, had audited the books of The Scottish American Investment Company in connection with deficiencies in its income taxes for the years 1927 to 1934, inclusive, arising from its failure to report profits on sales of securities as income (R. 79).

In 1936 Cooper and Earl Breeding of that firm visited Scotland and discussed with officials of the taxpayers the problem of opening an office for the taxpayers in the United States, including the effect of such an action in view of the new provisions for taxing foreign corporations in the Revenue Act of 1936. Cooper and Breeding left England in November, 1936, without any decision

having been reached by taxpayers with respect to opening offices in the United States. (R. 79-80.)

On December 2, 1936, each taxpayer appointed Cooper as its assistant secretary and cabled him to proceed with opening an office in the United States. The cables were confirmed by letters. (R. 80.)

Immediately upon receipt of the cables Cooper rented office space, consisting of two rooms on the twenty-sixth floor of the Equitable Building, at 120 Broadway, New York City, New York, in which the firm of Barrow, Wade, Guthrie & Company maintained offices on the twenty-seventh floor. A lease was taken out for each taxpayer and a designated part of the office was leased for each taxpayer for a specified sum per year. This office had a telephone which was connected with the switchboard in the offices of Barrow, Wade, Guthrie & Company. Taxpayers' United States office was established in order to enable taxpayers to keep in closer touch with their large United States investments, to do themselves what had formerly been done for them by others, and to gain certain tax advantages. (R. 80.)

Both before and after the opening of the United States office the securities of taxpayers were in the custody of J. P. Morgan & Company and the National City Bank and were registered in the names of nominees. Prior to December 2, 1936, the securities were registered in the names of the bank's regular nominees, each of whom

received a single dividend check on behalf of a number of stockholders. During December 1936, Cooper made arrangements with J. P. Morgan & Company and the National City Bank to designate for each taxpayer a new nominee in whose name were registered only securities of such taxpayer. By the end of December 1936, the new nominees had filed dividend mandates with the corporations, the securities of which were held by the taxpayers, directing payment of dividends and the sending of annual reports, statements, and notices to taxpayers at their United States office. (R. 80-81.)

During December 1936, Cooper obtained the services of several employees of Barrow, Wade, Guthrie & Company to determine methods of handling taxpayer's affairs, to establish proper accounts, install a bookkeeping system, and make current records on temporary sheets, copies of which were transmitted to the main offices in Edinburgh. The temporary records were later written up in final form. The records maintained by the United States office were the original records of taxpayers' transactions, receipts, and disbursements in the United States. All receipts of cash and all disbursements during December 1936, were currently entered in the temporary record. Beginning in December 1936, all expenses of each taxpayer in the United States were paid by the United States office. (R. 81-82.)

Beginning December 1936, and continuing through 1939, the dividends on United States securities to which each taxpayer was entitled were collected by the United States office (R. 82).

During December 1936, some of the dividends were paid directly to J. P. Morgan & Company and the National City Bank because the dividends, while payable in the latter part of December, were payable to stockholders as of a record date prior to filing of mandates by the new nominees. By the end of December most of the dividends were being paid directly to taxpayers' United States office. (R. 82.)

Throughout the taxable years Cooper rendered services as assistant secretary of taxpayers. In addition to Cooper two women were employed full time throughout the taxable years to render stenographic and clerical services. (R. 82.) At Cooper's suggestion each taxpayer in June, 1937, appointed Breeding as an additional assistant secretary, because of the illness of Cooper, who was required by his doctor to take a long vacation (R. 85). From February 1938, through the taxable year 1939, Henry A. Jeffers, an employee of Barrow, Wade, Guthrie & Company, supervised the activities of the office (R. 82).

Interest on bonds owned by taxpayers continued to be collected by the banks having custody of the securities. Checks for dividends collected by taxpayers' United States office were endorsed and deposited by the office in taxpayers' bank

accounts in the United States. After establishment of the office in the United States in December 1936, J. P. Morgan & Company did not send notices, annual reports, or proxies to the taxpayers. (R. 82-83.)

Cooper was authorized by each taxpayer to look after its interests in the United States and as a matter of regular routine to collect interest and dividends and deposit them in taxpayer's bank account, to pay local expenses, to maintain records of all transactions in the United States, to make periodical reports on economic, political and other developments in the United States, to complete and file federal tax returns, and to draw on its bank account in the United States in amounts up to \$5,000 in any one month, and up to any amount upon the countersignature of a director. Cooper's authority in the United States was as great as the authority of any officer or director at the main office. (R. 83.)

While the office of taxpayers was maintained at 120 Broadway, taxpayers filed New York state franchise tax returns. Later, taxpayers moved this office to New Jersey, where they qualified to do business under the laws of that state. The office of taxpayers in New Jersey consisted of a large room with one corner of it partitioned off as a private office. There was an outside telephone in the office with a New Jersey number and a trunk line to the office of Barrow, Wade, Guthrie & Company. (R. 83-84.)

The books and records kept for each taxpayer in the United States office constituted full and adequate records of taxpayers' security transactions, receipt of income, and all disbursements in the United States. Copies of cash sheets and journal entries were furnished to the main office of each taxpayer monthly by taxpayers' United States office. An annual statement was sent to the main office of each taxpayer at the end of December of each year by the United States office. (R. 84.)

The United States office periodically sent to taxpayers' home offices various reports concerning the United States investments, such as annual reports of corporations in which taxpayers had invested, and general developments in the United States, including statistical data issued by the Federal Reserve Bank and the New York Times. The United States office investigated reorganization plans of corporations in which taxpayers owned securities and made recommendations to taxpayers as to what action should be taken by them. (R. 84-85.)

Taxpayers' assistant secretary in the United States had authority to direct nominees to sign proxies and to direct the disposition of stock rights and scrip. He exercised the latter responsibility without consulting the main offices of taxpayers. He had authority to authorize the delivery of specific certificates on sales of securi-

ties for each taxpayer and exercised such authority without consulting the main offices (R. 85).

The United States office prepared the United States tax returns of taxpayers (R. 85).

The expenses of the United States office of the taxpayers were paid out of the amounts received by Cooper for his salary. Cooper's salary from Scottish was paid directly by that company by check or draft. With respect to British and Second British, Cooper drew his own salary checks on the accounts of those taxpayers at the banks. Incidental expenses, such as stationery, office supplies, light, and telephone, were paid by checks drawn by Cooper on taxpayers' accounts. The rent for office space was, at first paid out of Cooper's salary. Later, at Cooper's request, taxpayers assumed the charges for rentals. The amount paid Cooper for salary was subject to adjustment from time to time, depending upon the amount of expenditure incurred in connection with his activities. Every partner of Barrow, Wade, Guthrie & Company who earned outside income was required by the partnership to turn over such income to the firm. (R. 85-86.) The New York office expenses for the taxpayers were as follows (R. 86):

	1936	1937	1938	1939
Scottish	\$1,382.78	\$7,456.86	\$9,391.36	\$7,728.39
British	1,310.07	6,918.76	6,060.72	6,193.82
Second British	599.26	2,853.42	2,799.78	2,533.71

Cooper left the firm of Barrow, Wade, Guthrie & Company on October 31, 1940. Shortly after that time he tendered his resignation as assistant secretary of the taxpayers, which was accepted by each taxpayer. (R. 86.)

Upon the basis of these facts the Board of Tax Appeals held that during the taxable years taxpayers had an office or place of business within the United States within the meaning of Section 231 (b) of the Revenue Act of 1936 and the applicable Treasury Regulations. (R. 91-92). The Circuit Court of Appeals affirmed the Board's decision (R. 137).

SPECIFICATION OF ERRORS TO BE URGED.

1. The Circuit Court of Appeals erred in holding that taxpayers had an office or place of business within the United States during 1936 and 1937 within the meaning of the statute and the regulations.

2. The Circuit Court of Appeals erred in affirming the decisions of the Board of Tax Appeals.

REASON FOR GRANTING THE WRITS

On April 6, 1944, the Circuit Court of Appeals for the Third Circuit decided the identical question, involving the same taxpayers and the same findings of fact but different taxable years, favorably to the Government and therefore inconsistent with the decision herein. *Commissioner v. The Scottish American Investment Co., Ltd.*,

British Assets Trust, Ltd., and *Second British Assets Trust, Ltd.*¹ Although different taxable years are involved, the statute and regulations construed are the same in each case, and the decision of the Third Circuit is therefore in irreconcilable conflict with the decision herein.²

CONCLUSION

For the foregoing reasons, this petition for writs of certiorari should be granted.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

APRIL 1944.

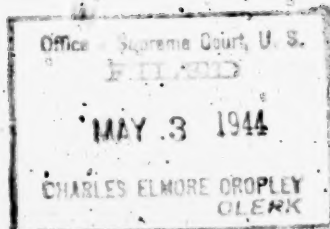
¹ A copy of the opinion has been lodged with the Clerk.

² The decision herein likewise appears to apply the statute and regulations differently from their application in *Linen Thread Co. v. Commissioner*, 128 F. (2d) 166 (C. C. A. 2), certiorari denied, 317 U. S. 673, and *Aktiebolaget Separator v. Commissioner*, 128 F. (2d) 739 (C. C. A. 2), certiorari denied, 317 U. S. 661, affirming 45 B. T. A. 243.

FILE COPY

Nos. 869-871.

52-54



IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED, RESPONDENT.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

BRITISH ASSETS TRUST, LIMITED, RESPONDENT.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

SECOND BRITISH ASSETS TRUST, LIMITED,
RESPONDENT.

MEMORANDUM FOR RESPONDENTS.

IN THE
Supreme Court of the United States

Nos. 869-871.

OCTOBER TERM 1943.

COMMISSIONER OF INTERNAL REVENUE, Petitioner.

v.

THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED, Respondent.

COMMISSIONER OF INTERNAL REVENUE, Petitioner.

v.

BRITISH ASSETS TRUST, LIMITED, Respondent.

COMMISSIONER OF INTERNAL REVENUE, Petitioner.

v.

SECOND BRITISH ASSETS TRUST, LIMITED, Respondent.

MEMORANDUM FOR RESPONDENTS.

These are tax cases involving the calendar years 1936 and 1937 of each of the respondents. Cases of the same taxpayers involving the same facts and provisions of the internal revenue laws, for the years 1938 and 1939 were decided by the Board of Tax Appeals together with these cases in one opinion. *The Scottish American Investment Co., Limited, et al., Petitioners, v. Commissioner of Internal*

Re: Respondent, 47 B. T. N. 454. On April 30, 1944, the Circuit Court of Appeals for the Third Circuit decided the cases involving the years 1938 and 1939 adversely to the taxpayers, reversing the Board of Tax Appeals.

The respondents are about to file a petition for writs of certiorari to the Circuit Court of Appeals for the Third Circuit. While respondents maintain that the decision below of the Circuit Court of Appeals for the Fourth Circuit is correct and that the decision of the Circuit Court of Appeals for the Third Circuit is erroneous, in view of the direct conflict between the two Circuits, they do not oppose the granting of writs of certiorari in these cases.

If the Court should grant writs of certiorari in these cases, respondents respectfully request that the case not be set for argument until after the petition for writs of certiorari to the Circuit Court of Appeals for the Third Circuit has been acted upon, and further request that if the petition for writs of certiorari to the Circuit Court of Appeals for the Third Circuit is granted, all cases be set for argument at the same time.

Respectfully submitted,

MARION X. FISHER,
15 Broad Street,
New York, N. Y.

Attorney for Respondents

CHARLES H. MOORE COOLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1944.

No.

220

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE.

No.

221

BRITISH ASSETS TRUST, LIMITED,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE.

No.

222

SECOND BRITISH ASSETS TRUST, LIMITED,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE.

**Petition for Writs of Certiorari to the United States
Circuit Court of Appeals for the Third Circuit.**

MARION N. FISHER,
Attorney for the Petitioners.

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TABLE OF CASES CITED:

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<i>Holcoring v. National Grocery Co.</i> , 304 U. S. 282 (1938)	12
<i>Holcoring v. Scottish American Inv. Co. Limited, Second British Assets Trust Limited and British Assets Trust Limited</i> , 139 F. (2d) 449	12
<i>National Labor Relations Board v. Hearst Publications, Incorporated, et al.</i> , decided April 24, 1944	12

OTHER AUTHORITIES CITED:

Internal Revenue Codes	
Section 231(b)	2, 3
Section 211(b)	3
Treasury Regulations 103	3, 4
Treasury Regulations 101	3, 4
Judicial Code as amended by the Act of February 13, 1925:	
Section 240(a)	2
Revenue Act of 1938:	
Section 231(b)	2, 3
c. 289, 52-Stat. 447	2

IN THE
Supreme Court of the United States
OCTOBER TERM, 1944.

No.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
Petitioner,

COMMISSIONER OF INTERNAL REVENUE.

No.

BRITISH ASSETS TRUST, LIMITED,
Petitioner,

COMMISSIONER OF INTERNAL REVENUE.

No.

SECOND BRITISH ASSETS TRUST, LIMITED,
Petitioner,

COMMISSIONER OF INTERNAL REVENUE.

**Petition for Writs of Certiorari to the United States
Circuit Court of Appeals for the Third Circuit.**

*To the Honorable the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

The Scottish American Investment Company, Limited,
British Assets Trust, Limited, and Second British Asset
Trust, Limited, pray that writs of certiorari issue to
review the judgments of the Circuit Court of Appeals for

the Third Circuit reversing the decisions of the Board of Tax Appeals (R. 93, 94).

Opinions Below.

The opinion of the Board (R. 77, 92) is reported in 47 B. T. A. 474. The opinion of the Circuit Court of Appeals (R. 135-140) is not yet reported.

Jurisdiction.

The judgments of the Circuit Court of Appeals were entered on April 6, 1944 (R. 140-142). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

The Question Presented.

Whether the petitioners, foreign corporations, were engaged in trade or business within the United States or had an office or place of business therein in the taxable years 1938 and 1939 and were therefore resident corporations within the meaning of Section 231(b) of the Revenue Act of 1938 and Section 231(b) of the Internal Revenue Code.

Statutes and Regulations Involved.

The applicable provisions of the Revenue Act of 1938, c. 280, 52 Stat. 447; and of the Internal Revenue Code are the same and are as follows:

"SEC. 231. TAX ON FOREIGN CORPORATIONS.

(b) Resident Corporations.—A foreign corporation

engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14(c)(1)."

"SEC. 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(b) United States Business or Office.— * * * As used in this section, section 119, section 143, section 144 and section 231, the phrase 'engaged in trade or business within the United States' includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian."

Treasury Regulations 101, promulgated under the Revenue Act of 1938, and Treasury Regulations 103, promulgated under the Internal Revenue Code, are in all material respects the same and are as follows:

"Sec. 19.231-1. Taxation of foreign corporations.

For the purposes of this section and sections 19.231-2,

* * * foreign corporations are divided into two classes:

- (a) foreign corporations not engaged in trade or business within the United States and not having an office or place of business therein at any time within

the taxable year, referred to in the regulations as non-resident foreign corporation * * *; and (b) foreign corporations which at any time within the taxable year are engaged in trade or business within the United States or have an office or place of business therein, referred to in the regulations as resident foreign corporations * * *.

(b) Resident foreign corporations.—

As used in Sections 119, 143, 144, 211, and 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities (including hedging transactions) through a resident broker, commission agent, or custodian.

"Whether a foreign corporation has an office or place of business within the United States depends upon the facts in a particular case. The term office or place of business, however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected."

Statement of the Case.

The petitioners are corporations organized under the laws of Great Britain with their principal offices in Edinburgh, Scotland. Each petitioner is an investment trust and as such engaged in the business of investing its funds for the primary purpose of deriving income from investments (R. 79). Their United States income tax returns for the years 1928 and 1929 were filed with the Collector of Internal Revenue at Newark, New Jersey (R. 79). On

December 2, 1936, at the time they opened their offices in the United States, their investments in United States securities in round figures amounted to (R. 79):

Scottish American Investment Company, Limited	\$24,500,000
British Assets Trust, Limited	15,000,000
Second British Assets Trust, Limited	8,500,000

The above investments represented more than 40% of the total investments of Second British Assets Trust, Limited, more than 30% of the total investments of British Assets Trust, Limited, and more than 40% of the total investments of Scottish American Investment Company, Limited (R. 79).

At the end of 1938 and 1939 the investments of Scottish American Investment Company, Limited (hereinafter called "Scottish"), in United States securities were in round figures \$23,200,000 and \$20,000,000 respectively (R. 6); of British Assets Trust, Limited (hereinafter called "British") \$16,000,000 and \$12,000,000 respectively (R. 13); and of Second British Assets Trust, Limited (hereinafter called "Second British") \$8,300,000 and \$6,000,000 respectively (R. 17).

Dividends collected by the petitioners from United States securities in 1938 and 1939, all of which were collected in the United States office, were as follows (R. 83):

	1938	1939
Scottish	\$730,021.45	\$731,180.92
British	548,923.43	570,355.47
Second British	262,292.80	259,735.11

Each of the petitioners owned a large number of different United States securities during the years involved (R. 79).

Each had a Board of Directors which met frequently at its home office in Edinburgh (R. 79). The home office of Scottish was managed by F. H. N. Walker, Secretary and Manager, and the home office of British and Second British was managed by a firm of secretaries, Messrs. Ivory & Sime. The Chairman of the Board of each petitioner was A. W. Robertson-Durham (R. 31, 80, 125-127).

Prior to 1936 Scottish had realized profits from the sale of securities in the United States but had failed to file Federal income tax returns reporting such profits. The accounting firm of Barrow Wade Guthrie & Co. of New York City was engaged by Scottish to audit its sales of securities in the United States and calculate the profits reportable for United States income tax on such sales. This resulted in a tax liability of more than \$1,000,000 with interest thereon of more than \$220,000 for the years 1927 to 1934, inclusive, which Scottish reported and paid to the United States (R. 80). In 1935 Walker, the Secretary and Manager, was in the United States and then discussed with Walter A. Cooper, member of the firm of Barrow Wade Guthrie & Co., the question of opening an office in the United States for Scottish (R. 80). In September and October 1936 Cooper with Earl Breeding, an employee of Barrow Wade Guthrie & Co., made a trip to England where they visited a number of their firm's clients. They discussed with petitioners the matter of opening an office in the United States, including the ways in which such an office would be of assistance to petitioners in their business transactions in the United States and the effect of it from the viewpoint of taxation under the then recently enacted Revenue Act of 1936 (R. 80, 81). Cooper and Breeding left England in November 1936 without any decision having been made. But on December 2, 1936, each petitioner appointed Cooper its Assistant Secretary and on that

date cabled the action to Cooper. The cable was followed by letters dated December 2, 1936, in the case of British and Second British and December 3 in the case of Scottish, informing him of his appointment and confirming instructions to him to proceed with the opening of an office in the United States (R. 81).

Immediately upon receipt of the cables Cooper rented office space consisting of two rooms in the Equitable Building at 120 Broadway, New York, New York, on the floor below the floor occupied by the offices of Barrow Wade Guthrie & Co. Designated space in the two rooms was leased to each petitioner for a specified rental per year (R. 81). In 1938 petitioners moved their offices to 26 Journal Square, Jersey City, New Jersey, where one large room was rented and a part of it partitioned off for a private office. The New York office was connected by a trunk line with the office of Barrow Wade Guthrie & Co. The New Jersey office was also connected by a trunk line with the office of Barrow Wade Guthrie & Co. and in addition it had an outside telephone with a Jersey City number. State tax returns were filed in New York and the petitioners qualified to do business in the State of New Jersey (R. 84, 85).

Prior to the opening of the United States office the petitioners kept their securities in custody accounts with J. P. Morgan & Co. and National City Bank. Securities so kept in custody by the banks were not registered in the names of the petitioners but in the names of nominees of the banks in whose names were also registered securities of other customers of the banks. Dividends received by the nominees were distributed by the banks to the accounts of their various customers (R. 81, 82).

After the office was opened Cooper arranged with the banks to designate nominees for each of the petitioners and to transfer to such nominees the securities belonging

to each of the petitioners so that each nominee would have registered in his name only the securities of the petitioner for whom he acted as nominee (R. 82). These nominees then filed dividend orders or mandates with the many corporations whose securities were registered in their names directing the payment of all future dividends to the respective petitioners at their New York office and later at their Jersey City office. They also directed that annual reports, statements and notices of the issuing corporations be sent to the petitioners at the aforesaid offices (R. 82).

Cooper then caused to be set up and established a complete system of accounts for each of the petitioners and for this purpose obtained the services of a number of the employees of Barrow Wade Guthrie & Co. The first records were made on temporary sheets which were later written in final form in the permanent books of account (R. 82, 83). Cooper continued to serve as Assistant Secretary of each of the petitioners during the years involved. At his suggestion, because of the need for prolonged absence from New York, Breeding was also appointed an Assistant Secretary of each petitioner in June 1937 (R. 83, 86). Cooper was authorized by each petitioner to look after its interests in the United States and was specifically authorized as a matter of special routine to perform the following duties:

1. Collect interest and dividends and deposit the same in the petitioners' bank accounts.
2. Pay all local expenses.
3. Maintain records of all United States transactions.
4. Make periodic reports (usually once a week) by cable or letter on economic, political or other developments in the United States.

5. Complete and file Federal income and capital stock tax returns (R. 84).

He had authority to draw on his sole signature from the bank accounts in the United States of each petitioner up to \$5,000 in any one calendar month and up to any amount with the countersignature of a director. This authority of Cooper over the petitioners' funds in the United States was as great as the authority of any other director or officer in the main office (R. 84). Breeding was not at first given authority to draw checks and make disbursements for the account of Scottish, but later this was changed to give him such authority, and thus he had the same authority as Cooper (R. 123-124). The Assistant Secretaries in the United States also had specific authority to direct the nominees to sign proxies, to direct the disposition of stock rights and scrip, and to direct the custodian banks as to which certificates should be delivered to complete sales of securities ordered by the home office. They had this authority without consultation with the home office (R. 86).

As of December 1st each year a statement of income and disbursements was sent to Edinburgh, which statement was later brought up to date at the end of the year by cable so that the petitioners could close their accounts for the calendar year promptly (R. 85). Periodically the United States office forwarded reports concerning investments, developments in the United States, and statistical data issued by the Federal Reserve Bank and the New York Times (R. 85, 86). The United States office investigated reorganization plans of corporations in whose securities petitioners had invested, and made recommendations as to what if any action should be taken by petitioners as shareholders in corporations undergoing reorganizations (R. 86).

The expenses of the New York office for each of the petitioners were as follows:

	1938	1939
Scottish	\$9,391.36	\$7,728.39
British	6,060.72	6,193.82
Second British	2,799.48	2,563.51

The arrangement of Cooper with the home office was to receive compensation sufficient to pay the expenses of the United States office plus a salary to himself. Salary checks to Cooper were first paid by checks from Edinburgh but later Cooper drew checks to himself for his salary. His salary from British and Second British was paid throughout by checks drawn by Cooper payable to himself. Other expenses were paid by Cooper in the case of all petitioners at all times by checks drawn on petitioners' bank accounts in the United States. An arrangement whereby a secretary or firm of secretaries receives compensation, including the expense of maintaining an office of the company, is a usual one among British investment trust companies (R. 120-122). In fact, Scottish is one of the few British investment trusts that does not operate its home office in conjunction with other investment trusts using the same secretaries and staff (R. 121, 122).

The office work of the petitioners occupied the time of at least two full time employees and part time of additional persons (R. 4, 114). In 1938 and 1939 Henry A. Jeffers, an employee of Barrow Wade Guthrie & Co., was assigned to supervise the office work done by the full time and part time employees on behalf of the Assistant Secretaries and in turn under their supervision. He spent a total of 1,038 1/2 hours in this work during the period February 28, 1938, to December 31, 1939 (R. 4, 113, 114). Each petitioner maintained in the United States office a general ledger.

a security ledger, a general journal, and a cash book. Each also maintained office debit and credit vouchers on which were recorded all sales and purchases of securities and disbursements of every character. The books and records kept in the United States constituted full and adequate records of petitioners' security transactions and receipts of income and disbursements in the United States (R. 85).

Specification of Errors to Be Urged.

1. The Circuit Court of Appeals for the Third Circuit erred in holding that the petitioners were not engaged in trade or business in the United States in 1938 and 1939 within the meaning of the statute and regulations.
2. The said Court erred in holding that the petitioners did not have an office or place of business in the United States in 1938 and 1939 within the meaning of the statute and regulations.
3. The said Court exceeded its appellate authority and erred in holding that the only real business of the corporations consisted of the purchase and sale of securities, a conclusion of fact contrary to the evidence and contrary to the conclusion of the Board of Tax Appeals that the collection at its office in the United States of income from many different sources and the numerous other activities of the petitioners in the United States constituted a very large part of the affairs of petitioners in the United States and the transaction of business.
4. The said Court erred in reversing the decisions of the Board of Tax Appeals.

Reasons for Granting the Writs.

On November 9, 1943, the Circuit Court of Appeals for the Fourth Circuit decided the same question involving the same petitioners and substantially the same facts for the years 1936 and 1937 favorably to the petitioners, *Deering v. Scottish American Ins. Co. Limited, Second British Assets Trust Limited and British Assets Trust Limited*, 139 F. (2d) 419. A petition for certiorari to the Circuit Court of Appeals for the Fourth Circuit was filed by the Solicitor General on behalf of the Commissioner of Internal Revenue on April 8, 1944, and was granted May 29, 1944 (Nos. 869, 870, 871). The decision of the Circuit Court of Appeals for the Third Circuit in the cases here involved is in direct conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit now pending on writs of certiorari in this Court.

The Circuit Court of Appeals for the Third Circuit exercised its appellate function contrary to the principles decided by the Supreme Court in *Helvering v. National Grocery Co.*, 304 U. S. 282 (1938); *Dobson v. Commissioner*, 320 U. S. 489 (1943), and *National Labor Relations Board v. Hearst Publications, Incorporated, et al.*, decided April 23, 1944.

Conclusion.

For the reasons set forth above this petition for writs of certiorari should be granted.

Respectfully submitted,

MARION S. FISHER,
Attorney for the Petitioners.

15 Broad Street,
New York, New York.

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Nos. 220-222

In the Supreme Court of the United States

OCTOBER TERM, 1944

SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE

BRITISH ASSETS TRUST, LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE

SECOND BRITISH ASSETS TRUST, LIMITED,
PETITIONER

COMMISSIONER OF INTERNAL REVENUE

A PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 220

SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 221

BRITISH ASSETS TRUST, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 222

SECOND BRITISH ASSETS TRUST, LIMITED,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R.
77-92) is reported in 47 B. T. A. 474. The opin-

(1)

2.
ion of the Circuit Court of Appeals (R. 135-140)
is reported in 142 F. 2d 401.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on April 6, 1944 (R. 140-142). The petition for writs of certiorari was filed on July 3, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayers were engaged in trade or business, or had an office or place of business, within the United States during the taxable years 1938 and 1939, so as to qualify as resident foreign corporations within the meaning of Section 231 (b) of the Revenue Act of 1938 and the Internal Revenue Code, and of Article 231-1 and Section 19.231-1 of Treasury Regulations 101 and 103, respectively.

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 231. TAX ON FOREIGN CORPORATIONS.

(b). *Resident Corporations.*—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (c) (1).

Section 231 (b) of the Internal Revenue Code, applicable to the year 1939, is substantially the same.

Treasury Regulations 101, promulgated under the Revenue Act of 1938:

ART. 231-1. *Taxation of foreign corporations.*—

Whether a foreign corporation has an "office or place of business" within the United States depends upon the facts in a particular case. The term "office or place of business," however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.

Section 19.231-1 of Treasury Regulations 103, promulgated under the Internal Revenue Code, applicable to the year 1939, is substantially the same.

DISCUSSION

This case, which presents the question whether the taxpayers should be classified as resident foreign corporations in the years 1938 and 1939, is a companion case to *Commissioner v. The Scottish American Investment Company, Ltd., et al.*, Nos. 52-54, this Term, raising the identical question, involving the same taxpayers and the same findings of fact, with respect to the years 1936 and 1937. Both cases were tried together on a single record

4
by the Board of Tax Appeals, and were decided by the Board in a single opinion. A statement of the facts found by the Board (R. 79-87) appears in the petition for certiorari filed by the Government in Nos. 52-54. The Board held that the taxpayers had an office or place of business within the United States in 1938 and 1939, as well as in 1936 and 1937, and hence came within the statutory definition of resident foreign corporation. Since the taxpayers' returns for the years 1936 and 1937 were filed with the Collector of Internal Revenue for the District of Maryland (R. 79), petitions for review of the Board's decision with respect to those years were taken to the Circuit Court of Appeals for the Fourth Circuit, which affirmed the Board's ruling on November 9, 1943. The Commissioner thereupon filed a petition for certiorari, which was granted on May 29, 1944.

The taxpayers' returns for the years 1938 and 1939 were filed with the Collector of Internal Revenue for the District of New Jersey (R. 79); consequently, petitions for review of the Board's decision relating to those years were taken to the Circuit Court of Appeals for the Third Circuit. On April 6, 1944, the court below, holding that the taxpayers did not have an office or place of business within the United States during the years 1938 and 1939, reversed the decision of the Board with respect to such years. (R. 135-140.) The decision below thus created a conflict which was

made the basis of the petition for certiorari in Nos. 52-54.

Although different taxable years are involved, the statutes and regulations construed are the same in each case. The decision below is therefore in direct conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in Nos. 52-54. Accordingly, we do not oppose the issuance of writs of certiorari in the present case.

Respectfully submitted,

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Solicitor General.

SAMUEL O. CLARK, Jr.,

Assistant Attorney General.

SEWALL KEY,

J. LOUIS MONARCH,

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Special Assistants to the Attorney General.

JULY 1944.

Section 231 of the Revenue Act of 1938 and of the Internal Revenue Code, Article 231-1 of Treasury Regulations 101, and Section 19.231-1 of Treasury Regulations 103, applicable to the years 1938 and 1939, are substantially the same as the corresponding provisions of the Revenue Act of 1936 and Treasury Regulations 94, applicable to the years 1936 and 1937.

Supreme Court of the United States

OCTOBER TERM, 1944.

Nos. 52-54 AND 220-222.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,

vs.

THE SCOTTISH AMERICAN INVESTMENT
COMPANY, LIMITED, *Respondent*.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,

vs.

BRITISH ASSETS TRUST, LIMITED, *Respondent*.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,

vs.

SECOND BRITISH ASSETS TRUST, LIMITED, *Respondent*.

THE SCOTTISH AMERICAN INVESTMENT
COMPANY, LIMITED, *Petitioner*,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

BRITISH ASSETS TRUST, LIMITED, *Petitioner*,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

SECOND BRITISH ASSETS TRUST, LIMITED, *Petitioner*,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURTS
OF APPEALS FOR THE FOURTH AND THIRD CIRCUITS.

BRIEF FOR TAXPAYERS.

MARION N. FISHER,
GEORGE CRAVEN,

Counsel for Taxpayers.

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Supreme Court of the United States

OCTOBER TERM, 1944.

No. 52.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED, Respondent.

No. 53.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

BRITISH ASSETS TRUST, LIMITED, Respondent.

No. 54.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

SECOND BRITISH ASSETS TRUST, LIMITED, Respondent.

No. 220.

THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

No. 221.

BRITISH ASSETS TRUST, LIMITED, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

No. 222.

SECOND BRITISH ASSETS TRUST, LIMITED, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURTS OF APPEALS FOR THE FOURTH AND THIRD CIRCUITS.

BRIEF FOR TAXPAYERS.

Opinions Below.

The opinion of the Board of Tax Appeals (R. 75-84) is reported in 47 B. T. A. 474; the opinion of the Circuit Court

of Appeals for the Fourth Circuit in Nos. 52-54 (R. 110-114) is reported in 139 F. (2d) 419, and the opinion of the Circuit Court of Appeals for the Third Circuit in Nos. 220-222 (Supp. R. 16-21)¹ is reported in 142 F. (2d) 401.

Jurisdiction.

In Nos. 52-54 the judgments of the Circuit Court of Appeals for the Fourth Circuit were entered November 9, 1943 (R. 114-118); on February 5, 1944, an order was signed by the Chief Justice extending for sixty days from February 8, 1944, the time within which a petition for writs of certiorari might be filed (R. 120); the petition for writs of certiorari was filed April 8, 1944, and was granted May 29, 1944.

In Nos. 220-222 the judgments of the Circuit Court of Appeals for the Third Circuit were entered April 6, 1944 (Supp. R. 21-23); the petition for writs of certiorari was filed July 3, 1944, and was granted October 9, 1944.

Questions Presented.

The taxpayers are foreign corporations, and they contend that during the taxable years 1936, 1937, 1938 and 1939 they were engaged in trade or business within the United States and had an office or place of business therein and accordingly were resident foreign corporations within the meaning of Section 231(b) of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code. The Board of Tax

¹ The case was presented in the Board of Tax Appeals on one record which is included in the printed record in Nos. 52-54, referred to herein as "R". The record of the proceedings in Nos. 220-222 before the Circuit Court of Appeals for the Third Circuit and on petitions for certiorari and certain exhibits applicable only to the years involved in Nos. 220-222 are printed as the record in those numbers and referred to herein as "Supp. R".

Appeals sustained that contention. The questions in all the cases for all years are:

1. Whether the determination of the Board of Tax Appeals that the taxpayers had an office or place of business in the United States and that such office was used for the regular transaction of business must be regarded as final or whether such determination is subject to review and reversal by an appellate court.

2. Whether in the taxable years the taxpayers were engaged in trade or business in the United States or had an office or place of business therein and therefore were resident foreign corporations.

The Commissioner's brief (pp. 3-4) states that the question presented "is whether the Board of Tax Appeals' undisputed finding of fact that the taxpayers maintained an office in the United States to perform certain routine functions including the receipt of dividends and the keeping of records is sufficient to sustain its conclusion that the taxpayers are entitled to be classified as resident foreign corporations * * *". Whether the findings of the Board may be construed to mean that the functions of the taxpayers performed at such office were only routine, may be an arguable question, but certainly the Board made no such positive finding.

Statute and Regulations Involved.

The applicable provisions of the statute are Sections 231(b) and 211(b) of the Revenue Act of 1936, c. 690, 49 Stat. 1648 (applicable to the years 1936 and 1937), and the same sections of the Revenue Act of 1938, c. 289, 52 Stat. 447 (applicable to the year 1938) and of the Internal Revenue Code, c. 2, 53 Stat. 1 (applicable to the year 1939). Those

sections are in all material respects the same in each of the applicable acts, and such sections of the Revenue Act of 1936 are as follows:

“SEC. 231. TAX ON FOREIGN CORPORATIONS.

(b) *Resident Corporations.*—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a), but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

SEC. 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(b) *United States Business or Office.*—• • • As used in this section, section 119, section 143, section 144, and section 231, the phrase ‘engaged in trade or business within the United States’ includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian.”

The pertinent provisions of Treasury Regulations 94, issued under the Revenue Act of 1936, which are in all material respects the same as the corresponding provisions

of Regulations 101, issued under the Revenue Act of 1938, and Regulations 103 (1939), issued under the Internal Revenue Code, are as follows:

“Art. 231-1. *Taxation of Foreign Corporations.*—

For the purposes of this article and articles 231-3, * * * foreign corporations are divided into two classes: (a) foreign corporations not engaged in trade or business within the United States and not having an office or place of business therein at any time within the taxable year, referred to in the regulations as nonresident foreign corporations * * *; and (b) foreign corporations which at any time, within the taxable year are engaged in trade or business within the United States or have an office or place of business therein, referred to in the regulations as resident foreign corporations * * *.”

(b) *Resident Foreign Corporations.*— * * *

As used in section 231, section 119, section 143, section 144, and section 211, the phrase ‘engaged in trade or business within the United States’ includes the performance of personal services within the United States at any time within the taxable year. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities (including hedging transactions) through a resident broker, commission agent, or custodian.

Whether a foreign corporation has an ‘office or place of business’ within the United States depends upon the facts in a particular case. The term ‘office or place of business,’ however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.

Art. 231-3. *Gross Income of Foreign Corporations.*

(b) *Resident Foreign Corporations.*—

A foreign corporation which effects transactions in the United States in stocks, securities, or commodities (including hedging transactions) through a resident broker, commission agent, or custodian is not merely by reason of such transactions considered as being engaged in trade or business within the United States which would cause it to be classed as a resident foreign corporation. However, a foreign corporation which at any time within the taxable year is otherwise engaged in trade or business in the United States or has an office or place of business therein, being a resident foreign corporation, is taxable upon all income derived from sources within the United States, including the profits realized from such transactions. A resident foreign corporation is also required to include in its gross income capital gains, gains from hedging transactions, and profits derived from the sale within the United States of personal property, or of real property located therein.

Statement.

These cases, involving income taxes of the respondents-petitioners (hereinafter referred to as taxpayers) for the years 1936, 1937, 1938 and 1939, were consolidated for hearing before the Board of Tax Appeals, which decided in favor of the taxpayers and held that during the taxable years they were resident foreign corporations. The returns of the taxpayers for 1936 and 1937 were filed with the Collector of Internal Revenue for the District of Maryland (R. 76), and petitions for review of the Board's decisions with respect to those years were filed by the Commissioner

with the Circuit Court of Appeals for the Fourth Circuit, which affirmed the Board. The returns for 1938 and 1939 were filed with the Collector at Newark, New Jersey (R. 76), and petitions for review of the Board's decisions with respect to those years were filed by the Commissioner with the Circuit Court of Appeals for the Third Circuit, which reversed the Board. Writs of certiorari were granted by this Court to review the judgments of both Circuit Courts of Appeals.

The facts as found by the Board of Tax Appeals are fully set forth at pages 5 to 15 of the Commissioner's brief and are not repeated here. If, as the taxpayers contend, the Board's findings and the conclusion based thereon are final and the evidence may not be re-examined, no other facts should be considered. However, if the Court should decide to review and re-examine the facts and the evidence, the following additional facts which appear in the record are pertinent:

At the end of the years 1936, 1937, 1938 and 1939 the investments of taxpayers in United States securities were in round figures respectively as follows (R. 5, 12, 16):

	1936	1937	1938	1939
Scottish.....	\$24,500,000	\$25,000,000	\$24,400,000	\$20,000,000
British.....	15,100,000	16,200,000	16,000,000	12,000,000
Second British	8,500,000	8,600,000	8,400,000	6,100,000

During the taxable years the taxpayers made sales of securities through bankers and brokers in the United States and on such sales realized the following amounts (R. 67-74; Supp. R. 1-13):

	No. of different lots of securities sold	Total amount realized
1936		
Scottish.....	67	\$2,747,281.08
British.....	26	1,126,365.86
Second British.....	25	607,704.99
1937		
Scottish.....	47	1,363,297.36
British.....	24	916,330.30
Second British.....	25	200,989.32
1938		
Scottish.....	43	1,366,120.13
British.....	31	763,626.33
Second British.....	14	510,123.25
1939		
Scottish.....	62	3,059,919.67
British.....	72	4,845,852.58
Second British.....	39	2,082,955.38

Original advices of brokers as to all purchases and sales made after the United States office was opened were sent to that office (R. 36). Purchases and sales of securities were recorded on the books of the taxpayers which were kept in the United States office and which showed the cost prices of all American securities owned by the taxpayers (R. 10-12, 79).

Some years prior to the years in question the taxpayers had maintained an office in the United States, which had been abandoned (R. 32, 161). At the time the firm of accountants was engaged in preparing income tax returns for Scottish showing capital gains for back years when no office was maintained in this country, the preparation of such returns was difficult because of lack of adequate records, and the necessary figures were obtained only by extensive search of the records of brokers and banks (R. 101).

When the Manager of Scottish was in the United States in 1935 and talked with Cooper about reopening an American office, he expressed concern over the fact that Scottish had been required to pay more than \$200,000 in interest on past due Federal income taxes because of its failure to report capital gains promptly. He referred to the fact that such interest was more than it would have cost to keep the United States office open right along, said that if the companies were to be faced with such problems in the future something should be done about it, and said that serious consideration should be given to the reopening of the office. (R. 101.)

When Cooper and his associate in the fall of 1936 discussed with officials of the taxpayers in Scotland the question of opening the United States office, one of the reasons stated by such officials for considering such office advisable was that they had found great difficulty in obtaining promptly statements of the financial condition of the American companies in which their funds were invested (R. 26). It was not until after the matter of opening a United States office had been discussed seriously at the conference in Scotland that there was a discussion of the effect of such office on the United States income tax payable by the taxpayers (R. 32). Cooper advised the taxpayers' officials at that conference that if a United States office were opened before the end of 1936, there would be a considerable saving in United States income taxes for that year, but he advised them also that the opening of such office might result in their having to pay considerably higher taxes in subsequent years (R. 33).

It is customary among British companies operating as investment trusts to appoint a secretary or assistant secretary to act for several companies and to pay him as compensation a sum from which he must pay the expense of

maintaining the office of the companies. (R. 102-103): The firm of secretaries which managed the affairs of British and Second British at the home office in Scotland did substantially the same things which the United States representative did, plus making distributions to shareholders. The securities were held in custody accounts with British banks and the secretaries recorded income (R. 38).

A. W. Robertson-Durham was Chairman of the Board of Directors of all three taxpayers (R. 58-61, 104-106).

Specification of Errors to be Urged in Nos. 220-222.

1. The Circuit Court of Appeals for the Third Circuit erred in holding that the petitioners were not engaged in trade or business in the United States in 1938 and 1939 within the meaning of the statute and regulations.

2. The said Court erred in holding that the petitioners did not have an office or place of business in the United States in 1938 and 1939 within the meaning of the statute and regulations.

3. The said Court exceeded its appellate authority and erred in holding that the only real business of the corporations consisted of the purchase and sale of securities, a conclusion of fact contrary to the evidence and contrary to the conclusion of the Board of Tax Appeals that the collection at its office in the United States of income from many different sources and the numerous other activities of the petitioners in the United States constituted a very large part of the affairs of petitioners in the United States and the transaction of business.

4. The said Court erred in reversing the decisions of the Board of Tax Appeals.

Summary of Argument.

I.

The determination of the Board of Tax Appeals that the taxpayers had an office or place of business within the United States and that such office was used for the regular transaction of business was a determination of a question of fact which, being supported by substantial evidence, may not be reversed by an appellate court.

The Board of Tax Appeals and the Circuit Court of Appeals for the Third Circuit did not differ as to the meaning of the applicable statutes and regulations. However, the Third Circuit Court of Appeals drew inferences of fact from the evidence which were contrary to those drawn by the Board, and on the basis of such different inferences it reached an opposite ultimate conclusion. The appellate court had no authority to review the evidence and substitute its own conclusions for those of the Board. *Helvering v. National Grocery Co.*, 304 U. S. 282, 294 (1938); *Wilmington Trust Co. v. Helvering*, 316 U. S. 164, 168 (1942).

Even if it be held that the question at issue is not a pure question of fact, nevertheless, it is a question depending "upon the facts of a particular case" under the express language of the regulations. The Board did not make a clear-cut mistake of law and there was a rational basis for its decision. Therefore, the Board's decision should be regarded as final and is not subject to reversal on appeal. *Dobson v. Commissioner*, 320 U. S. 489 (1943).

Of all the cases which have been presented to the courts involving the question of whether a foreign taxpayer has an office or place of business in the United States, the decision of the Third Circuit Court of Appeals below is the only one which has reversed a decision of the Board of Tax Appeals, and that court in so doing exceeded its appellate authority.

The evidence shows clearly that the taxpayers were engaged in trade or business within the United States during the taxable year. The business of the taxpayers, which were investment trusts, was to invest their funds so as to yield income, to collect such income and after paying expenses to distribute the net amount to their shareholders. It is not disputed that the taxpayers were engaged in trade or business, but the Commissioner's contention is that on the evidence they were not engaged in trade or business in the United States.

A large percentage of the investments of the taxpayers was in American securities, and these were held in custodian accounts in banks in this country. The taxpayers made many and large purchases and sales through brokers in this country and collected interest through banks and dividends through their United States office. Records were kept in their United States office of the purchases and sales and of their receipts and disbursements, and other activities were carried on which were necessary to safeguard the interests of the taxpayers with respect to their American investments. Although the statutory phrase "trade or business" does not include the effecting of transactions in securities through a custodian, the other activities were essential to the business of the taxpayer and are not excluded from the meaning of such phrase. The regulations provide that the effecting of transactions in securities through a resident custodian or broker "is not merely by reason of such transactions considered as being engaged in trade or business within the United States", and in view of the other activities of the taxpayers, their transactions in securities through brokers and custodians become material.

Where a corporation is organized for profit and is pursuing the ends for which it was organized, it is doing business. *Edwards v. Chile Copper Co.*, 270 U. S. 452 (1926). Measured by that test, the essential activities which were carried on in this country irrespective of the transactions through custodians and brokers constituted engaging in trade or business.

III.

In any event, the taxpayers in the taxable years had an office or place of business in the United States. The phrase "engaged in trade or business" and the phrase "having an office or place of business" are used in the statute in the disjunctive and are not synonymous. *B. W. Jones Trust v. Commissioner*, 132 F. (2d) 914 (C. C. A. 2, 1943). The cases in which it has been held that an office maintained by a foreign corporation was not an office or place of business within the meaning of the applicable statute and regulations are cases in which the office was a sham or in which the activities carried on through such office were not part of the essential activities for which the corporation was formed.

Here, however, the taxpayers maintained a *bona fide* office with full-time employees, where essential activities were carried on and complete records were kept. The officer of each taxpayer who had charge of such office had the same authority as any officer at the home office. The decision of the Board of Tax Appeals was clearly correct in holding that the taxpayers during the taxable year were resident foreign corporations within the meaning of the statute.

Argument.

POINT I

The determination of the Board of Tax Appeals was final and may not be reversed on appeal.

The statute does not define the phrase "engaged in trade or business", except to exclude certain specified transactions, or the phrase "having an office or place of business". The regulations (Art. 231-1(b), Reg. 94) provide that whether a foreign corporation has an office or place of business within the United States "depends upon the facts in a particular case".

The Board after a consideration of all the evidence found full facts bearing on the question at issue and determined that the taxpayers had an office or place of business in the United States and that such office was used by them for the regular transaction of business. The Circuit Court of Appeals for the Fourth Circuit upheld the Board's conclusion, while the Circuit Court of Appeals for the Third Circuit, after reviewing the facts, substituted its own conclusion for that of the Board and decided that the taxpayers were not resident foreign corporations.²

In the course of its opinion the Board clearly stated factual inferences, including: " . . . an office handling affairs to this extent must be regarded as real and substantial. It was here that a very large part of the affairs of petitioners in this country were taken care of. It [the office] . . . was maintained in this country because of

² The Circuit Court of Appeals for the Third Circuit neither discussed nor cited the decision of the Circuit Court of Appeals for the Fourth Circuit, although counsel for the taxpayers mailed three copies of the opinion of the latter court to the former court more than three months before its decision was rendered.

the administrative necessity of having local supervision of its affairs. * * *. The office was used for the regular transaction of business and not as a place where casual or incidental transactions might be or were, effected" (R. 83-84).

The Circuit Court of Appeals for the Third Circuit reviewed the evidence and drew contrary factual inferences on which its ultimate conclusion, obviously depended, namely: "They [the Boards of Directors] did everything of any importance in connection with these concerns, * * *. The so-called United States office functioned solely on routine matters. * * * the business of that office had only to do with the unimportant collateral detail, voluminous though such might be, * * *". The Court also implied that the office was not "bona fide in the sense that it functioned truly on the one business of the taxpayers," (Supp. R. 19, 21).

There was no difference between the Board and the Third Circuit Court of Appeals as to the meaning of the applicable statutes and regulations. The differences were in the factual inferences drawn from the evidence, and their ultimate conclusions depended upon the respective inferences so drawn. The aforementioned inferences by the Board were supported by an abundance of evidence and the appellate court had no authority to substitute its own conclusions for those of the Board. *Helvering v. National Grocery Co.*, 304 U. S. 282, 294 (1938); *Helvering v. Rankin*, 295 U. S. 123, 131 (1935); *Helvering v. Lazarus*, 308 U. S. 252, 255 (1939); *Wilmington Trust Co. v. Helvering*, 316 U. S. 164, (1942); *Regensburg v. Commissioner*, 144 F. (2d) 41, (C. C. A. 2, 1944).

As was said in the *Wilmington Trust Company* case (316 U. S. at p. 168):

"It is the function of the Board, not the Circuit Court of Appeals, to weigh the evidence, to draw

inferences from the facts, and to choose between conflicting inferences. The court may not substitute its view of the facts for that of the Board. Where the findings of the Board are supported by substantial evidence they are conclusive."

3

The Commissioner's argument in this Court consists largely of reviewing and reweighing the evidence which was considered by the Board and asking the Court to draw factual inferences and conclusions contrary to those drawn by the Board.

The question at issue before the Board of whether the taxpayers had an office or place of business in the United States or were engaged in trade or business therein is essentially a question of fact (Art. 231-1 (b), Reg. 94).

No error of law by the Board of Tax Appeals has been pointed to either by the Circuit Court of Appeals for the Third Circuit, which reversed the Board, or by the Commissioner in his brief. The conclusion of the Board of Tax Appeals that the office of the taxpayers in the United States was used for the regular transaction of their business and that they were accordingly resident foreign corporations is one for which the appellate court should not substitute its own conclusion.

But even if the question at issue be considered a mixed question of law and fact, the decision of the Board is nevertheless final.

This Court in *Dobson v. Commissioner*, 320 U. S. 489 (1943), reexamined the power of appellate courts to review and reverse decisions of the Tax Board and in comprehensive language delineated that power. The Court held that the Circuit Court of Appeals had no authority to reverse the Tax Board's determination that the taxpayer did not realize income on the recovery of a loss deducted on his

return in a prior year, when such deduction did not result in a tax benefit. The controlling principles stated by the Court were:

"But 'the judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.'" (p. 501.)

"... when the court cannot separate the elements of a decision so as to identify a clear-cut mistake of law, the decision of the Tax Court must stand." (p. 502.)

"Where no statute or regulation controls, the Tax Court's selection of the course to follow is no more reviewable than any other question of fact." (p. 502.)

"The statute gives ~~no~~ inkling as to the correctness or incorrectness of the Tax Court's view, and we can find no compelling reason to substitute our judgment." (p. 507.)

The decision of the Board in the instant cases was in complete harmony with the statute and regulations. The Board determined from the facts that the taxpayers came within the definition of resident foreign corporations as used in the statute and regulations, and there is nothing in the statute or regulations which requires a different conclusion. There was a rational basis for the Board's decision, and it should be treated as final.

The Court in the *Dobson* case cited with approval certain of its prior decisions upholding the finality of the decisions of administrative officials or boards on mixed questions of law and fact. Among these decisions are *Gray v. Powell*, 314 U. S. 402, 411-412 (1941); *Mississippi Valley*

Barge Line Co. v. United States, 292 U. S. 282, 286-287 (1934); *Shields v. Utah Idaho Central Railroad Co.*, 305 U. S. 177, 180-181 (1938); *Swayne & Hoyt v. United States*, 300 U. S. 297, 307 (1937). See also *Parker v. Motor Boat Sales*, 314 U. S. 244, 246 (1941); and *National Labor Relations Board v. Hearst Publications*, decided April 24, 1944, 64 S. Ct. 851.

In each of those cases the Court reiterated the principle that even where there is no dispute as to the evidentiary facts, an appellate court may not substitute its judgment for that of the administrative tribunal on an issue as to which a contrary decision is not dictated by a controlling principle of law.

The Commissioner's brief (p. 22) argues that since there is "no substantial controversy between the parties as to the subsidiary facts, i.e., what the activities of the taxpayers were", the *Dobson* case merely means that such subsidiary facts as determined by the Board may not be reviewed, but that the conclusion to be drawn from those facts is subject to appellate review. The Commissioner's brief differs sharply from the Board as to what the activities were. However, the Court in the *Dobson* case and the other cases last cited above decided that even if there is no dispute as to the evidentiary facts the rule of finality is not limited to such facts found by the administrative tribunal, but applies to all determinations not in conflict with a provision of the statute or regulations, where there is no clear-cut mistake of law and there is a rational basis for the administrative determination. As was said in *Gray v. Powell supra* (314 U. S. at p. 412):

"Although we have here no dispute as to the evidentiary facts, that does not permit a court to substitute its judgment for that of the Director. . . . It is not the province of a court to absorb the administrative

functions to such an extent that the executive or legislative agencies become mere fact-finding bodies deprived of the advantages of prompt and definite action."

Commissioner v. Heininger, 320 U. S. 467 (1943), presented the question of whether attorney's fees and expenses incurred in defending unsuccessfully a fraud order issued by the Postmaster General were deductible as ordinary and necessary business expenses. The Board of Tax Appeals decided against the taxpayer, but solely because of its reversal by the Circuit Court of Appeals in a similar case which it had decided in favor of a taxpayer. The Circuit Court of Appeals reversed the Board's decision in the *Heininger* case, and this Court affirmed the Circuit Court, saying (p. 475):

"Whether an expenditure is directly related to a business and whether it is ordinary and necessary are doubtless pure questions of fact in most instances. Except where a question of law is unmistakably involved a decision of the Board of Tax Appeals on these issues, having taken into account the presumption supporting the Commissioner's ruling, should not be reversed by the federal appellate courts."

The effect of the decision in the *Heininger* case is that if the Board had decided that the expenses were or were not ordinary and necessary business expenses on the basis of the facts before it and not because of a decision of a higher court which was erroneous, its decision would have been final.

Here, there is no controlling legal principle which requires a contrary decision, and the determination of the Board that the taxpayers had an office or place of business

in the United States and that such office was used for the regular transaction of business, must stand.

Finally, in every case which has presented the question of whether a foreign taxpayer has an office or place of business in the United States, with the single exception of the decision of the Third Circuit Court of Appeals below, the decision of the Board of Tax Appeals has been affirmed. See *Aktiebolaget Separator v. Commissioner*, 128 F. (2d) 739 (C. C. A. 2, 1942), affirming 45 B. T. A. 243 (1941); *Linen Thread Co. v. Commissioner*, 128 F. (2d) 166 (C. C. A. 2, 1942), affirming memorandum decision of Court of Tax Appeals; and *B. W. Jones Trust v. Commissioner*, 132 F. (2d) 914 (C. C. A. 4, 1943), affirming 46 B. T. A. 531 (1942). The taxpayer's appeal to the Circuit Court of Appeals for the Fourth Circuit in *Recherches Industrielles v. Commissioner*, 45 B. T. A. 253 (1941), was dismissed October 4, 1943.

POINT II.

The taxpayers were engaged in trade or business within the United States.

In addition to its determination that during the taxable years the taxpayers had an office or place of business within the United States, the Board found that "the office was used for the regular transaction of business and not as a place where casual or incidental transactions might be, or were, effected" (R. 84). A holding that the office *was used* for the regular transaction of business is necessarily a holding that the petitioners were engaged in trade or business within the United States.

If the Court should reexamine the facts of the case, it will be found that the evidence amply justifies that finding and that the petitioners clearly were so engaged in trade or business.

In *Flint v. Stone Tracy Co.*, 220 U. S. 107 (1911), which arose under the Corporation Excise Tax Act of 1909, the Court approved the following definitions of business (at p. 171):

'Business' is a very comprehensive term and embraces everything about which a person can be employed. . . . 'That which occupies the time, attention and labor of men for the purpose of a livelihood or profit.'"

The petitioners were investment trusts, and the business of each consisted of investing its capital funds for the primary purpose of realizing a profit. The profit took the form of income derived and collected from such investments. The collection of such income and the keeping of records pertaining to the income and to the purchases and sales of securities were essential parts of the business for which the petitioners were organized. The gathering of information affecting the investments, including studying reports and making recommendations with respect to the reorganization of corporations in which funds were invested, was likewise an essential part of the prudent conduct of this business. Those things were done in the United States through the office maintained by the taxpayers and by their officers and employees.

The time and attention required for those matters is indicated by the fact that the investments in American securities amounted to approximately \$50,000,000 and the dividends collected each year through the United States office amounted to \$1,500,000 to \$2,000,000.

Also, the taxpayers made a large number of sales of securities through brokers in the United States in each of the four years, of which Scottish made sales of from 43 to 67 lots of securities for amounts ranging from \$1,360,000 to \$3,000,000 per year, British made sales of 24 to 72 lots of

securities for sums ranging from \$800,000 to \$4,800,000 each year, and Second British sold from 14 to 39 lots of securities at prices ranging from \$200,000 to \$2,000,000 each year (R. 67-64; Supp. R. 1-13).

The statute (Sec. 211(b)) provides that the phrase "engaged in trade or business within the United States" does not include sales through a resident broker or custodian. However, the regulations (Art. 231-3(b)) provide that a foreign corporation is not *merely* by reason of such transactions through a resident broker or custodian considered as being engaged in trade or business within the United States, thus indicating that such transactions are to be taken into consideration along with other activities in order to determine whether the corporation is engaged in trade or business. In addition to other activities the United States office received the original brokers' advices of purchases and sales, recorded all such transactions in the books and in many cases directed what securities should be delivered to effectuate sales.

Where the only activities of a foreign corporation in the United States consisted of effecting purchases and sales through brokers in this country and it had no officer or representative and maintained no office here, it was held not engaged in trade or business, even in the absence of a statutory provision excluding such transactions from the definition of trade or business. *Union Internationale de Placements v. Hocy*, 96 F. (2d) 591 (C. C. A. 2, 1938). The Court said (at p. 593) that the corporation "could come into the jurisdiction and be present here only by sending into the jurisdiction or maintaining here its officers or other agents". Compare *Berliner Handels-Gesellschaft v. United States*, 30 F. Supp. 490 (Ct. of Cls., 1939) cert. den. 309 U. S. 670 (1940).

It is not disputed that during the taxable years the taxpayers were engaged in trade or business (R. 82). The position of the Commissioner appears to be that the business of the taxpayers was transacted in its entirety at their home offices in Scotland and that no essential part of such business was carried on in the United States. It is true that meetings of directors were held at the home office and decisions were made and orders issued from there with respect to the purchase and sale of securities. Nevertheless, the American securities constituted approximately 40% of the total investments of the taxpayers, and the collection of dividends, the keeping of proper records with respect to such dividends and with respect to the purchase and sale of securities, and the gathering and transmitting of the necessary financial data with respect to the corporations in which such investments were made were essential parts of the entire business carried on by the taxpayers.

Where a corporation is organized for one purpose and discontinues the activity for which it was organized and reduces its activities to the mere collection of income and the distribution of such income among its stockholders, or where the corporation merely receives income from leased property and carries on no activity in the management of its property, it has been held that the corporation is not engaged in trade or business. See *McCoach v. Minchill Railway Co.*, 228 U. S. 295 (1913); *United States v. Emery*, 237 U. S. 28 (1915); *Zonne v. Minneapolis Syndicate*, 220 U. S. 187 (1911). Cf. *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503 (1917). On the other hand, an individual, trust or estate which merely invests its funds and collects income is not engaged in business however large the volume of transactions. *Higgins v. Commissioner*, 312 U. S. 212 (1941); *City Bank Farmers Trust Co. v. Helvering*, 313 U. S. 121 (1941); *United States v. Pyne*, 313 U. S. 127 (1941).

But the revenue authorities would be the last to contend that a domestic corporation formed for the purpose of and doing nothing but investing its funds and collecting income therefrom is not engaged in business and therefore liable to pay the Federal capital stock tax and declared value excess profits tax (Art. 42 of Regs. 64, *infra*). In *Edwards v. Chile Copper Co.*, 270 U. S. 452 (1926), the Court said (pp. 455-456):

"The exemption 'when not engaged in business' ordinarily would seem pretty nearly equivalent to when not pursuing the ends for which the corporation was organized, in the cases where the end is profit. In our opinion the plaintiff was liable to the tax. We do not rest our conclusion upon the issue of bonds in the first year or the call loans made in the last, and for the same reasons we cannot let the fagot be destroyed by taking up each item of conduct separately and breaking the stick. The activities and situation must be judged as a whole."

This test was applied to a holding or investment company in *Phillips v. International Salt Co.*, 274 U. S. 718 (1927) reversing *per curiam* 9 F. (2d) 389 (C. C. A. 3, 1925). The Circuit Court of Appeals held that the corporation's activities amounted to "no more than acts incidental to the ownership of property" and that "they are not the positive, aggressive acts incidental to the active carrying on or doing business for gain, but rather the receipt of the gains of business capitalized in ownership." The Supreme Court reversed on the authority of its decision in the *Chile Copper Company* case. See also *Stanley Securities Co. v. United States*, 38 F. (2d) 907 (Ct. Cls., 1930), cert. den. 282 U. S. 845.

In *American Investment Securities Co. v. United States*, 112 F. (2d) 231 (C. C. A. 1, 1940), although the activities of the corporation were few, it was held to be doing busi-

ness and subject to the capital stock tax, where "It is still in active quest of profits and has not abandoned the business from which it originally sought to derive those profits" (at p. 233). The court stressed the tendency of the decisions to confine the exemption narrowly. See also *Harmar Coal Co. v. Heiner*, 34 F. (2d) 725, 728 (C. C. A. 3, 1929).

At the time Sections 211 and 231 of the Revenue Act of 1936 were enacted, Congress had the benefit of the tests prescribed in *Flint v. Stone Tracy Co.* and *Edwards v. Chile Copper Co.*, *supra*, and also the capital stock tax regulations then in force (Art. 42 of Reg. 64), which embodied and elaborated on the tests established in those cases.³ In using the phrase "engaged in trade or business" in those sections, Congress used it in the same sense in which it had been construed in the decisions of this Court and the regulations then outstanding. See G. C. M. 17014, XV-2 C. B. 317 (1936).

The Commissioner's brief attempts to split the activities of the taxpayer between those relating solely to purchases and sales and those relating to collecting the income from the investments and argues that the business of the tax-

³ Art. 42 of Reg. 64. Doing business.—The term "business" is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of its activities, any corporation organized for profit and carrying out the purpose of its organization is doing business within the meaning of the Act. Similarly, even if not organized for profit, any corporation which nevertheless engages in activities ordinarily carried on for profit is also doing business. It is immaterial whether the activities result in a profit or a loss, whether the corporation has been successful in its enterprise, or that because of unfavorable business conditions, no operations are carried on for a particular period. No particular amount of business need be done, nor is it necessary that the business be continuous throughout the taxable year.

The case is exceptional in which the activities of a corporation organized for profit do not amount to doing business within the meaning of the Act. Such a case is generally limited to one in which the corporation is not pursuing the ends for which organized, i. e., profit.

payer was investing funds, not collecting income, and that therefore the collecting of income was not a business activity. It is a sufficient answer to this to point out that the very purpose of investing funds is to produce income and that if the income were not collected, the very purpose of the taxpayers' business would be defeated. Moreover, this Court made it clear in the *Chile Copper Company* case that the chain of activities which as a whole constitute the doing of business may not be broken by considering each activity separately.

Measured by every test, the activities carried on by the taxpayers in the United States were essential parts of their entire activities, and during the taxable years they were engaged in trade or business within the United States.

POINT III.

The taxpayers had an office or place of business in the United States.

The phrase "office or place of business" is not synonymous with the phrase "engaged in trade or business". *B. W. Jones Trust v. Commissioner*, 132 F. (2d) 914, 917 (C. C. A. 4, 1943). The statutory language is in the disjunctive and not the conjunctive. In the 1942 Act Congress amended the law and eliminated the phrase "office or place of business" and limited resident corporations and alien individuals to those engaged in trade or business within the United States. This established a single test and brought the income tax provisions into harmony with the capital stock tax provisions (see Sec. 160, Revenue Act of 1942, and Sec. 1200, I. R. C.). The change from a dual test to a single test leaves no doubt that the intent and purpose of Congress in the Revenue Act of 1942 differed from its

intent and purpose in the 1936 and intervening Revenue Acts.

The intent of Congress in the 1936 Act is logically and clearly revealed in the history of taxation of alien individuals and foreign corporations under our income tax statutes.

Prior to 1936, all revenue acts had required foreign corporations and nonresident alien individuals having income and capital gains from sources within the United States to file annual returns of net income and pay tax on net income at the same rates which were imposed upon domestic corporations, citizens and residents. Administration of this requirement was difficult and unsatisfactory where the taxpayer was a nonresident, beyond the jurisdiction of the tax authorities, and adequate information about his affairs could not be obtained. In many instances no returns were filed and proper audit of such returns as were filed was impracticable. In large measure the tax could not be collected, especially on capital gains.

Collection of the tax at the source was limited to withholding at normal tax rates on "fixed or determinable annual or periodical" items of income, such as interest, rents and royalties. There was no withholding on dividends, which were not subject to the normal tax, or on capital gains, which are not fixed or determinable annual or periodical income.⁴ In many cases the withholding tax was the only tax collected.

The phrases "office or place of business" and "engaged in trade or business" were no doubt drawn from the withholding provisions of the Revenue Act of 1934 and prior

⁴ Sec. 143(b), Rev. Act, 1934, and corresponding provisions of prior Acts.

⁵ Art. 143-2, Reg. 86 (1934) and corresponding provisions of prior regulations.

Acts. Section 143 (b) of the Revenue Act of 1934 and corresponding provisions of prior Acts provided that United States paying agents should withhold tax at the source on income paid to nonresident aliens "not engaged in trade or business within the United States and not having any office or place of business therein". The withholding provisions obviously were concerned solely with collection, and Congress did not deem it necessary to withhold from aliens who had any office or place of business or carried on a trade or business within the United States in order to assure collection.

Such had been the state of the law regarding nonresident aliens and foreign corporations from 1913 to 1936. When the Revenue Act of 1936 was under consideration, Congress decided to revise the method of taxing foreign taxpayers in order to remedy the defects in respect of collection and administration. Accordingly, it divided foreign corporations and alien individuals into two classes (1) those engaged in trade or business within the United States or having an office or place of business therein and (2) those not so engaged in trade or business and not having such office or place of business.

As to the second class, the tax was imposed on gross income at a flat withholding rate (less than the rates on net income), with no further tax liability, and capital gains were made exempt from tax. This was because of the difficulty of collecting the tax by any method other than withholding and because it was impossible for withholding agents to ascertain the amount of capital gains, and because it was considered desirable to encourage foreign taxpayers to retain their investments in American securities and continue to make purchases and sales in this country. See hearings before House Ways and Means Committee on Revenue Act of 1936, 74th Cong., 2d Sess., pp. 161-174).

Those falling in the first class were taxed in exactly the same way that they had been taxed since 1913, that is, on the basis of their net income, and they continued liable to make annual returns of their entire income, including capital gains, from sources within the United States and were allowed the corresponding deductions and credits which were allowed to domestic corporations and citizens.

This change in the policy of Congress toward foreign corporations and alien individuals was thus limited to those cases in which the established method of taxation could not be applied successfully because of administrative difficulty and lack of jurisdiction over the persons and properties of the taxpayers. The other class of foreign taxpayers was placed on the same basis for taxation as citizens and domestic corporations, that is, in the same way that they had always been taxed.⁶

The purpose of Congress in making the change in the method of taxing such taxpayers is indicated in the Committee Reports on the Revenue Bill of 1936 (74th Cong., 2d Sess., H. R. Rep. No. 2475, p. 10; Sen. Rep. No. 2156, p. 23) where it is stated in part:

"It is believed that the proposed revision of our system of taxing nonresident aliens and foreign corporations will be productive of substantial amounts of additional revenue, since it replaces a theoretical system impractical of administration in a great number of cases."

It is thus clear that the revision was designed to create a workable tax system and not to impose a greater tax bur-

⁶ See "Collecting the Revenue", Tax Magazine for October, 1936, pp. 586, 590, where Mr. Eldon P. King, Special Deputy Commissioner of Internal Revenue, stated as to alien individuals and foreign corporations located within this country that "Enforcement of our general provisions as to this class of taxpayers has presented no greater problems than it has as to citizens".

den on foreign taxpayers than on residents. Congress in effect gave foreign taxpayers their choice of submitting or not submitting to the jurisdiction of the United States. If they did not, their taxes would be paid in full by being withheld at the source at a lesser flat rate on gross income, and they would not be subject to tax on capital gains. If they chose to bring themselves within the jurisdiction of this country to the extent necessary to insure accurate determination and collection of their tax liability, they would, as in the past, pay tax on the same basis as citizens or other residents.

The office of the taxpayers, at which was conducted a large part of the affairs essential to their business in the United States, at which complete records were maintained, and which was supervised by one resident officer at all times and two resident officers a part of the time, clearly brought the taxpayers within the jurisdiction of the United States and fully met the purpose of Congress.

Of course the purpose of Congress would not be served by an office without real substance. Thus, it has been held that where a foreign manufacturing corporation merely maintained space in the office of a subsidiary with a part time employee who had no responsibility and its only activities consisted of receiving dividends from two domestic corporations, or where a foreign corporation had a common office shared with many other unrelated entities and had no books of account, maintained no bank account, collected no income and had no permanent employee, it did not meet the requirement of the law. *Aktiebolaget Separator v. Commissioner*, 128 F. (2d) 739 (C. C. A. 2, 1942), affg. 45 B. T. A. 243 (1941); *Recherches Industrielles v. Commissioner*, 45 B. T. A. 253 (1941), appeal to C. C. A. for 4th Circuit dismissed October 4, 1943. Similarly, where the foreign taxpayer was a manufacturing corporation, carried on none

of its regular business activities in this country, its office was in charge of a resident agent who was an employee of an American subsidiary and who acted under a power of attorney, and the income collected at such office consisted of dividends on three American investments. *Linen Thread Co. v. Commissioner*, 128 F. (2d) 166 (C. C. A. 2, 1942), affg. memo. dec. of Board of Tax Appeals.

The Board of Tax Appeals, which decided each of those cases, reached a different conclusion on the facts of the instant cases, and the facts fully support that conclusion. In contrast to the facts upon which the decisions in the last cited cases were based, a review of the considerations giving rise to the opening of the United States office and the essential functions of the taxpayers which were performed there will show that the office complied with the provisions of the statute and regulations and with the purpose of Congress in enacting the statute.

Some years prior to the years in question the taxpayers had maintained an office in the United States, which had been abandoned (R. 32, 106). During the years 1927 to 1934, when no office was maintained in this country, Scottish had realized large capital gains on the sale of securities in this country. Capital gains are not regarded as income under the British law, and British investment corporations may not pay dividends out of capital gains or show such gains in their profit and loss accounts. As a consequence and because of lack of proper information about the United States income tax laws, Scottish did not file Federal income tax returns for those years. (R. 76.) The accounting firm of which Walter A. Cooper was a member was employed to make an audit of the transactions of Scottish over that period, and as a result of that audit Scottish paid Federal income taxes of more than \$1,000,000 on capital gains for those years, together with interest in excess of \$200,000

(R. 76-77). The preparation of the returns was a difficult task because of the lack of adequate records, and the necessary figures were obtained only by searching the records of brokers and bankers (R. 101).

In 1935, before there was any provision of the Federal income tax law treating resident foreign corporations differently from nonresident foreign corporations, the Manager of Scottish was in the United States and discussed with Cooper the question of opening a United States office (R. 77). He was concerned about the large amount of interest which Scottish had had to pay on back United States taxes, referred to the fact that such interest was more than the expense of keeping the office here would have been, and said that if his companies were to be faced with problems of that sort serious consideration should be given to reopening the American office (R. 101). In the fall of 1936 Cooper and an associate were in Scotland and discussed further with the officials of taxpayers the opening of a United States office (R. 77). One reason stated by such officials as to why a United States office was considered desirable was that the taxpayers had found difficulty in obtaining financial statements promptly and in keeping themselves abreast of the financial condition of the many United States corporations in which they had invested in the aggregate approximately \$50,000,000 (R. 26).

It was not until after the matter of opening a United States office had been discussed seriously at the conference in Scotland that there was a discussion of the effect of such office on United States income taxes payable by the taxpayers (R. 32). The new provisions of the income tax law applied for the entire year 1936 to a corporation having an office or place of business in the United States during any part of that year (Reg. 94, Arts. 231-1 and 231-3(b)), and Cooper advised that there would be a considerable

saving in taxes for the year 1936 if the office were open before the end of that year. However, such office would render the taxpayers subject to tax on capital gains, on which Scottish had been required to pay such a large tax for prior years, and Cooper was careful to advise that the United States office might result in their having to pay larger taxes in subsequent years than if they had no such office.⁷ (R. 33.)

Thus, while the difficulties over United States income taxes for past years, due to their failure to maintain an office in this country, caused the taxpayers to consider the advisability of reopening their United States office, there is no indication that current and future taxes were the principal consideration which caused them to reestablish that office.

When the decision was made to open an office in the United States, the office was designed to be a real headquarters for the taxpayers' affairs in this country, where its dividends could be collected, proper records kept, and full information gathered and transmitted to the home office with respect to the American investments of the taxpayers. Dependence on custodians had proved unsatisfactory and in the case of Scottish, costly. It was resolved to have a fully responsible representative in the United States who could give the necessary attention to those matters.

The directors did not appoint a mere clerk or part-time employee with no authority or responsibility, but they appointed Cooper an Assistant Secretary, a position of re-

⁷ The Commissioner's brief in a footnote at p. 47 says that "It is apparent, of course, that an investor owning large numbers of different securities, can, in the normal course, neutralize the gain he may have on one sale by selecting another security which can be sold at a loss". The mere statement of that contention is its own refutation, for it assumes that regardless of market conditions the taxpayers would always have securities on which losses had accrued.

sponsibility and trust. He was instructed to establish and take charge of an office and to look after the affairs of each of the taxpayers in this country, and he was given at least as great authority as any officer was given at the home offices of the companies. Among other things, his duties consisted of collecting and depositing dividends, paying all the local expenses, keeping records of the great volume of transactions which the company had in this country, making periodical reports (usually once a week) on economic and political developments here as they affected taxpayers' interests, gathering and sending abroad financial data on corporations in which funds were invested, taking care of proxies, studying and making recommendations with respect to plans for the reorganization of companies in which funds were invested, disposing of stock rights and scrip, designating the specific stock certificates to be transferred on a sale by one of the taxpayers of less than all of its holdings of stock of a particular corporation, preparing income and capital stock tax returns, and other duties, all of which were an indispensable part of the investment trust business of the taxpayers.

The duties entrusted to Cooper were discharged fully. At least two full-time employees were needed and retained during the years in question to look after the taxpayers' affairs, and they were supervised by Jeffers. In fact, the volume of taxpayers' activities in this country was so great that nothing short of a full-fledged office would have sufficed. This is shown not only by the nature of the records kept but also by the number of entries made therein. These records included a general ledger, embodying a security investment control account showing the cost of securities owned; a security ledger containing a separate account for each stock and bond owned which showed the number, date,

of acquisition and cost of each certificate; a general ledger; a cash book; and a set of debit and credit vouchers.

The regulations provide that an office or place of business "implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected" (Reg. 94, Art. 231-1(b)). Thus, the affairs of the taxpayers which enter into the determination of its Federal income tax liability must flow through the office regularly and not occasionally or incidentally. That the acts performed by the United States office of the taxpayers were performed regularly and not incidentally is beyond question. The records maintained at the office provided full information for all United States tax purposes and nothing more was needed to insure the determination and collection of the full tax on net income. In addition, the acts of the officers and employees in the United States constituted an integral part of the business for which the taxpayers were organized and operated.

Reduced to its essentials, the Commissioner's argument is that the business of the taxpayers was solely investing their funds, which he defines as buying and selling securities and nothing else; that since decisions of what and when to buy and sell were made in Edinburgh, and not in the United States, there was no office or place of business in this country. As already shown, the business of an investment company cannot be so limited. The Board found that each of the taxpayers was "engaged in the business of investing the funds of its security holders for the primary purpose of deriving income from investments" (R. 76), and after citing *McCoach v. Minchill Railroad Co.*, *supra*, continued "it does not follow that the collection of the income of a large investment trust from hundreds of different sources is not to be regarded as the transaction of

business" (R. 84). The Commissioner's definition of the business of an investment company is not only incorrect but as applied to the meaning of the phrase "office or place of business" would eliminate all distinction between that phrase and "carrying on a trade or business", which may not be done.

The facts fully justify the conclusion reached by the Board of Tax Appeals and the Circuit Court of Appeals for the Fourth Circuit.

Conclusion.

The taxpayers during the taxable years were engaged in trade or business within the United States and had an office or place of business therein and were resident foreign corporations within the meaning of the statute and regulations. The judgments of the Circuit Court of Appeals for the Fourth Circuit should be affirmed, and the judgments of the Circuit Court of Appeals for the Third Circuit should be reversed.

Respectfully submitted,

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15 Broad Street,
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November 8, 1944.

Nos. 52-54 and 220-222

In the Supreme Court of the United States

OCTOBER TERM, 1944

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

BRITISH ASSETS TRUST, LIMITED

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

SECOND BRITISH ASSETS TRUST, LIMITED

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
PETITIONER

COMMISSIONER OF INTERNAL REVENUE

BRITISH ASSETS TRUST, LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE

SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURTS OF APPEALS FOR THE FOURTH AND THIRD CIRCUITS

BRIEF FOR THE COMMISSIONER OF INTERNAL REVENUE

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 52

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED

No. 53

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

BRITISH ASSETS TRUST, LIMITED

No. 54

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

SECOND BRITISH ASSETS TRUST, LIMITED

No. 220

THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 221

BRITISH ASSETS TRUST, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

(1)

No. 222.

SECOND BRITISH ASSETS TRUST, LIMITED,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

*ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURTS OF APPEALS FOR THE FOURTH AND THIRD CIRCUITS*

BRIEF FOR THE COMMISSIONER OF INTERNAL REVENUE

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 75-84)¹ is reported at 47 B. T. A. 474. The opinion of the Circuit Court of Appeals for the Fourth Circuit (R. 110-114) is reported at 139 F. 2d 419. The opinion of the Circuit Court of Appeals for the Third Circuit (Nos. 220-222, R. 16-21) is reported at 442 F. 2d 401.²

JURISDICTION

In Nos. 52-54 the judgments of the Circuit Court of Appeals for the Fourth Circuit were entered on November 9, 1943. (R. 114, 116-117, 118-119.)³ On February 5, 1944, the Chief Justice

¹ All record references are to the printed record in Nos. 52-54, unless otherwise indicated.

² The cases of the three taxpayers were consolidated in both Circuit Courts of Appeals for briefing, argument, and decision (R. 115, 118; Nos. 220-222, R. 14-15), and only one opinion was delivered by each court. Separate judgments were, however, entered in each case. The Board of Tax Appeals wrote only one opinion but rendered separate decisions with respect to each taxpayer.

signed an order extending the time within which a petition for certiorari might be filed for sixty days from February 8, 1944. (R. 119-120.) The petition for writs of certiorari was filed on April 8, 1944, and was granted on May 29, 1944. (R. 120-121.)

In Nos. 220-222 the judgments of the Circuit Court of Appeals for the Third Circuit were entered on April 6, 1944. (Nos. 220-222, R. 21-23.) The petition for writs of certiorari was filed on July 3, 1944, and was granted on October 9, 1944. (Nos. 220-222, R. 25-26.)

The jurisdiction of this Court is based upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The tax liability of the taxpayers, which are foreign investment trusts, depends upon whether they were "engaged in trade or business" or had "an office or place of business" within the United States during the years in question, so as to qualify as resident foreign corporations within Section 231 (b) of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code, as interpreted by the applicable regulations. The question presented is whether the Board of Tax Appeals' undisputed finding of fact that the taxpayers maintained an office in the United States to perform certain routine functions, including the receipt of dividends and the keeping of records,

is sufficient to sustain its conclusion, that the taxpayers were entitled to be classified as resident foreign corporations, or whether, as a matter of law, the taxpayers could satisfy the statutory requirement only by showing that they maintained an office here for the transaction of their regular business as foreign investment trusts.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in the Appendix, pp 53-60.

STATEMENT

The taxpayers are corporations organized under the laws of Great Britain, with principal offices in Edinburgh, Scotland. Each taxpayer is an investment trust, engaged in the business of investing the funds of its security holders for the primary purpose of deriving income from investments. (R. 76.) The taxpayers' returns for the calendar years 1936 and 1937 were filed with the Collector of Internal Revenue for the District of Maryland. Their returns for the calendar years 1938 and 1939 were filed with the Collector of Internal Revenue at Newark, New Jersey. (R. 76.)

The Board of Tax Appeals held that the taxpayers had an office or place of business within the United States during the taxable years, and hence were entitled to be taxed as resident foreign corporations under Section 231 (b) of the Revenue

Acts of 1936 and 1938 and the Internal Revenue Code. (R: 84.) Under Section 1141 of the Internal Revenue Code, decisions of the Board of Tax Appeals may be reviewed by the Circuit Court of Appeals for the circuit in which is located the Collector's office where the tax return is filed. Pursuant thereto, petitions for review of the Board's decisions with respect to the years 1936 and 1937 were addressed to the Circuit Court of Appeals for the Fourth Circuit, and petitions for review of the decision with respect to 1938 and 1939 were addressed to the Circuit Court of Appeals for the Third Circuit. On November 9, 1943, the Fourth Circuit affirmed the Board's decision relating to the years 1936 and 1937 (R. 110-114), but on April 6, 1944, the Third Circuit, holding that the taxpayers did not have an office or place of business within the United States during the years 1938 and 1939, reversed the decision of the Board with respect to such years. (Nos. 220-222, R: 16-21.) Although different taxable years were involved, the Board's findings of fact were identical, and the statutes and regulations construed were substantially the same in both cases. The decisions of the Third and Fourth Circuits thus created a conflict which was made the basis of the petition for certiorari in each case.

The facts found by the Board (R. 75-81) are substantially as follows:

Each taxpayer has invested large amounts in securities in the United States. On December 2, 1936, the taxpayers had the following amounts invested in United States securities (R. 76):

Scottish American Investment Co., Ltd. (hereinafter referred to as Scottish)	\$24,452,752.79
British Assets Trust, Ltd. (hereinafter referred to as British)	14,974,359.67
Second British Assets Trust, Ltd. (hereinafter referred to as Second British)	8,457,000.00

The investment of British in United States securities represented over 30% of its total investments. The investment of Second British in the United States was in excess of 40% of its total investments. The relative investment of Scottish in the United States was proportionately larger than that of the other two taxpayers. During the taxable years each taxpayer owned a large number of different United States securities. (R. 76.)

Each taxpayer had a board of directors, which met frequently at its home office in Edinburgh. British and Second British were managed, as is customary for investment trusts in England and Scotland, by a firm of secretaries engaged in the business of management. (R. 76.)

For some years prior to 1936, Scottish had realized profits in the sale of securities in the United States, but had not filed federal income tax returns reporting the profit thereon. British companies, such as the taxpayers, are forbidden to pay dividends out of capital gains or to show such gains in their profit and loss accounts. The accounting firm of Barrow, Wade, Guthrie &

Company of New York City, of which Walter A. Cooper, a certified public accountant, was a partner, was engaged by Scottish to make a check or audit of its sales of securities and resulting profit over the period of years prior to 1936. As the result of this audit, taxes for the years 1927 to 1934, inclusive, in excess of \$1,000,000, plus interest of \$220,000, were paid by Scottish. (R. 76-77.)

In 1935, F. H. N. Walker, the manager of Scottish, was in the United States and discussed with Cooper the question of opening an office in the United States for Scottish. (R. 77.) During September and October, 1936, Cooper, together with Earl Breeding, an employee of Barrow, Wade, Guthrie & Company, made a trip to England and Scotland, where they visited a number of their firm's clients. They discussed with various officials of the taxpayers the question of opening an office for the taxpayers in the United States, including the ways in which a United States office might assist the taxpayers in business transactions, and the tax benefits of such an action under the Revenue Act of 1936. Cooper and Breeding left England in November, 1936, without any decision having been reached by the taxpayers as to whether they would open offices in the United States. (R. 77.)

On December 2, 1936, each taxpayer appointed Cooper its assistant secretary and, on the same day, eabled its decision to Cooper. British and

Second British wrote letters to Cooper dated December 2, 1936, informing him of his appointment and instructing him to proceed with the opening of an office in the United States. Scottish wrote Cooper a letter, dated December 3, similar to those sent him by the other taxpayers. (R. 77.)

Immediately upon receipt of the cables Cooper rented office space, consisting of two rooms on the twenty-sixth floor of the Equitable Building, at 120 Broadway, New York City, in which the firm of Barrow, Wade, Guthrie & Company maintained offices on the twenty-seventh floor. A lease was made on behalf of each taxpayer, and a designated part of the suite was leased to each taxpayer for a specified sum per year. This office had a telephone which was connected with the switchboard in the offices of Barrow, Wade, Guthrie & Company. The taxpayers' United States office was thus established, as the Board found, in order to enable the taxpayers to keep in closer touch with their large United States investments, to do themselves what had formerly been done for them by others, and to gain tax benefits. (R. 77.)

Both before and after the opening of their United States office, the securities of taxpayers were in the custody of J. P. Morgan & Company and the National City Bank. The securities were registered in the names of nominees. Prior to

December 2, 1936, the securities were registered in the names of the bank's regular nominees, each of whom received a single dividend check on behalf of a number of stockholders. During December, 1936, Cooper made arrangements with J. P. Morgan & Company and the National City Bank to designate for each taxpayer a new nominee in whose name were registered only securities of such taxpayer. By the end of December, 1936, the new nominees had filed dividend mandates with the corporations, the securities of which were held by the taxpayers, directing payment of dividends and the sending of annual reports, statements, and notices to the taxpayers at their United States office. (R. 77-78.)

During December, 1936, Cooper obtained assistance from Barrow, Wade, Guthrie & Company in ~~establishing proper accounts for the taxpayers~~ and in determining the methods of handling the taxpayers' affairs in the United States. The services of several employees of Barrow, Wade, Guthrie & Company were devoted to installation of a bookkeeping system and making current records in December, 1936. During that month, the records of each taxpayer were maintained on temporary sheets, copies of which were transmitted to the main offices in Edinburgh. The temporary records were later written up in final form. The records maintained by the United States office were the original records of the tax-

payers' transactions, receipts, and disbursements in the United States. All receipts of cash and all disbursements during December, 1936, were currently entered in the temporary record. Beginning in December, 1936, all expenses of each taxpayer in the United States were paid by the United States office. (R. 78.)

Throughout the taxable years Cooper rendered services as assistant secretary of each of the taxpayers. In addition to Cooper, two women were employed full time throughout the taxable years to render stenographic and clerical services. From February, 1938, through 1939, Henry A. Jeffers, an employee of Barrow, Wade, Guthrie & Company, supervised the activities of the office and spent a total of 1,038½ hours on the affairs of the taxpayers during that period. (R. 78.)

Beginning December, 1936, and continuing through 1939, the dividends on United States securities to which each taxpayer was entitled were collected by the United States office. (R. 78.) During December, 1936, some of the dividends were paid directly to J. P. Morgan & Company and the National City Bank because the dividends, while payable in the latter part of December, were payable to stockholders as of a record date prior to filing of mandates by the new nominees. By the end of December most of the dividends were being paid directly to the taxpayers' United States office. (R. 78.)

The taxpayers received the following amounts in dividends from United States securities (R. 79):

	1936	1937	1938	1939
Scottish	\$895,912.76	\$1,114,108.57	\$730,021.43	\$731,180.92
British	673,119.74	823,253.10	548,923.43	570,355.62
Second British	342,598.75	356,286.85	262,202.80	259,735.11

Interest on bonds owned by the taxpayers continued to be collected by the banks having custody of the securities. Checks for dividends collected by the taxpayers' United States office were endorsed and deposited by the office in the taxpayers' bank accounts in the United States. After establishment of the office in the United States in December, 1936, J. P. Morgan & Company did not send notices, annual reports, or proxies to Scottish or British. (R. 79.)

Cooper was authorized by each taxpayer to look after its interests in the United States. Specifically, he was authorized by each taxpayer, as a matter of regular routine, to attend to the following (R. 79):

- (1) The collection of interest and dividends, and deposit of such income in the company's bank account.
- (2) The payment of all local expenses.
- (3) The maintenance of records of all United States transactions.
- (4) The making of periodical reports (usually once a week) by cable and/or

letter on economic, political or other developments in the United States.

- (5) The completion and filing of Federal income tax and capital stock tax returns.

Cooper was also specifically authorized by each taxpayer to draw on its bank account or accounts in the United States in amounts up to \$5,000 in any one calendar month, and up to any amount upon the countersignature of a director. The authority of the assistant secretary of each taxpayer in the United States was as great as the authority of any director or officer at the main office. (R. 79.)

During the period in which the office of the taxpayers was maintained at 120 Broadway, New York, the taxpayers filed New York state franchise tax returns. Later, the taxpayers moved this office to New Jersey, where they qualified to do business under the laws of that state. The taxpayers' New Jersey office consisted of a large room with one corner partitioned off as a private office. There was an outside telephone in the office with a New Jersey number and a trunk line to the office of Barrow, Wade, Guthrie & Company. (R. 79.)

Each taxpayer maintained in its office in the United States a general ledger, a security ledger, a general journal, and a cash book. The general ledgers, security ledgers, and cash books were loose-leaf, while the general journals were bound

volumes. Each taxpayer also maintained here debit and credit vouchers in which all sales and purchases of securities and disbursements of every character were entered. The books and records kept for each taxpayer in the United States office constituted full and adequate records of the taxpayers' security transactions, receipt of income, and all disbursements in the United States. (R. 80.)

Copies of cash sheets and journal entries were furnished to the main office of each taxpayer monthly by the taxpayers' United States office. An annual statement was sent to the main office of each taxpayer at the end of December of each year by the United States office. Usually a statement of income and disbursements as of December 1 was sent to Edinburgh; the statement was brought up to date at the end of the year by cable so that the taxpayers might close out their accounts promptly. (R. 80.)

The United States office periodically sent to the taxpayers' home offices various reports concerning the investments in this country, such as annual reports of corporations in which the taxpayers had invested, and general financial developments in the United States, including statistical data issued by the Federal Reserve Bank and the New York Times. The United States office investigated reorganization plans of corporations in which the taxpayers owned securities, and made

recommendations to the taxpayers as to what action should be taken by them. (R. 80.)

At Cooper's suggestion each taxpayer in June, 1937, appointed Breeding as an additional assistant secretary. Breeding's appointment resulted from the illness of Cooper, who was ordered by his doctor to take a long vacation. Breeding's appointment provided for no additional salary. (R. 80.)

The taxpayers' assistant secretary in the United States had authority to direct nominees to sign proxies and to direct the disposition of stock rights and scrip. He exercised the latter responsibility without consulting the main offices of taxpayers. He had authority to authorize the delivery of specific certificates on sales of securities for each taxpayer and exercised such authority without consulting the main offices. (R. 80.)

The United States office prepared the United States tax returns of the taxpayers. (R. 80.)

The expenses of the taxpayers' United States office were paid out of the amounts received by Cooper for his salary. Cooper's salary from Scottish was paid directly by that company by check or draft. With respect to British and Second British, Cooper drew his own salary checks on the accounts of those taxpayers at the banks. Incidental expenses, such as stationery, office supplies, light, and telephone, were paid by checks drawn by Cooper on the taxpayers' accounts. The rent for office space was at first paid out of

Cooper's salary. Later, at Cooper's request, the taxpayers assumed the charges for rentals. The amount paid Cooper for salary was subject to adjustment from time to time, depending upon the amount of expenditures incurred in connection with his activities. Every partner of Barrow, Wade, Guthrie & Company who earned outside income was required by the partnership to turn over such income to the firm. (R. 80-81.) The New York office expenses for the taxpayers were as follows (R. 81):

	1936	1937	1938	1939
Scottish	\$1,382.78	\$7,456.86	\$9,351.36	\$7,728.39
British	1,310.07	6,918.78	6,070.72	6,193.82
Second British	569.26	2,853.42	2,759.78	2,533.71

Cooper left the firm of Barrow, Wade, Guthrie & Company on October 31, 1940. Shortly after that time he tendered his resignation as assistant secretary of the taxpayers, which was accepted by each taxpayer. (R. 81.)

In addition to the foregoing facts specifically found by the Board, the record discloses other uncontroverted evidence which is material to the question involved, and which, the Commissioner contended in the courts below, the Board erred in failing to find. (R. 87-88.) The additional facts, together with the record references at which they appear, are as follows:

1. Barrow, Wade, Guthrie & Company had about 100 foreign clients, of whom approximately

75 were investment trusts: (R. 20.) Mr. Cooper's association with the firm was as an expert accountant. (R. 29.) Prior to his employment by the taxpayers, he had not been connected with investment companies in an official capacity and had never served as investment counsel, although he had on occasion worked on valuation of securities. (R. 35.)

2. Both before and after the opening of the taxpayers' United States office in 1936, J. P. Morgan & Company was custodian for Scottish of the United States securities owned by it; National City Bank was custodian for Second British; and the securities of British were divided between the two custodian banks. (R. 13-14, 17, 18-19, 45.)

3. Prior to December, 1936, the charge made to Scottish for custodian and collection service by J. P. Morgan & Company was $\frac{1}{16}$ of 1% annually on the amount of securities handled, and $\frac{1}{4}$ of 1% on the amount of income collected. No change in charges was made after December, 1936, even though dividend income was collected thereafter by Cooper rather than by J. P. Morgan & Company. (R. 34-35, 40-41, 47-49.) In the case of British, the annual charge made by J. P. Morgan & Company for custodian services, including collection of income, consisted of a percentage of the amount of securities maintained in custody for the year, at a rate of $\frac{1}{16}$ of 1% on the first \$500,000, $\frac{1}{15}$ of 1% on the next \$500,000, and $\frac{1}{20}$ of 1% on all over \$1,000,000. No change was made

by J. P. Morgan & Company either prior or subsequent to December, 1936, in the basis or method of computing such charges. (R. 34-35, 47-49.) The National City Bank prior to December, 1936, charged both custodian and income collection fees. After December, 1936, it charged only a flat custodian fee. (R. 34-35.)

4. All of the financial and investment policies of the taxpayers were determined by their boards of directors at the main offices in Edinburgh. This included decisions as to what securities to buy and what to sell. (R. 31-32, 35-36, 37.)

5. During the taxable years each of the taxpayers made many purchases and sales of securities through brokers in the United States. Orders for such transactions were effected directly between the main offices of the taxpayers or foreign brokers in Edinburgh and the United States brokers, the custodian banks delivering to the United States brokers the securities sold and accepting for custody any securities purchased. (R. 11, 17, 28, 43.) In some instances the custodian bank acted as broker. (R. 49.) The taxpayers did

* The taxpayers made sales of securities for total prices as follows (R. 67-74; Nos. 220-222; R. 1-13):

	1936	1937	1938	1939
Scottish	\$2,747,281.08	\$1,363,297.36	\$1,366,120.13	\$3,059,919.67
British	1,126,365.86	916,330.30	763,625.33	1,845,852.58
Second British	667,704.93	200,989.32	510,123.25	2,082,955.98

not carry any balances with the United States brokers, and the transfer of moneys or credit was handled directly between the banks and the brokers. (R. 28-30, 48-51.) Even after the taxpayers' New York office was opened in December, 1936, no change was made in the method of effecting purchases and sales of securities through brokers in this country. (R. 35.)

6. The taxpayers' New York office had nothing to do with purchases and sales of securities, with the exceptions that it recorded the changes in the securities account upon advice that purchases or sales had been made, and that where only a part of the stock of a certain corporation was sold, Cooper would advise the bank which particular certificates to deliver to the broker. (R. 7, 9-11, 13, 16-17, 19-20, 28, 42-43, 48-50, 55-56, 57-59, 59-61.) Checks for the purchase price of securities were not made out by the New York office and did not go through the office. (R. 17, 28-29.)

7. Practically all of the work performed by the New York office of the taxpayers consisted of receiving and recording the dividend checks, recording the securities owned and changes therein from time to time, and paying and recording the organization and administration expenses incidental to the office. (R. 36.)

SPECIFICATION OF ERRORS TO BE URGED IN NOS. 52-54

1. The Circuit Court of Appeals for the Fourth Circuit erred in holding that taxpayers had an

office or place of business within the United States during 1936 and 1937 within the meaning of the statute and the applicable regulations.

2. The Circuit Court of Appeals for the Fourth Circuit erred in affirming the decisions of the Board of Tax Appeals.

SUMMARY OF ARGUMENT

The question presented involves the meaning and application of Section 231 (b) of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code, as interpreted by the applicable regulations, to uncontroverted facts. We believe that this issue was properly regarded by both courts below as one of law, as to which the principle of finality of decisions of the Board of Tax Appeals, established in *Dobson v. Commissioner*, 320 U. S. 489, rehearing denied, 321 U. S. 231, is inapplicable.

The taxpayers are not entitled to be classified as foreign corporations resident within the United States during the taxable years 1936 to 1939, inclusive, because the facts do not support the conclusion that they were engaged in trade or business, or had an office or place of business within the United States within the meaning of the applicable statutes and regulations.

The facts found by the Board, as well as the undisputed evidence adduced before it, disclose that the taxpayers managed their United States investments from their home offices in Scotland and that they negotiated all purchases and sales

directly with brokers in the United States. Banks in the United States had custody of all United States securities and collected the income on bonds owned by the taxpayers. The taxpayers' "office" consisted of leased space at which employees collected dividends on stocks, deposited them, kept records of all United States transactions, paid local expenses, prepared United States tax returns, transmitted information to the taxpayers' office in Edinburgh, and performed other chores which were merely incidental to their investment trust business.

The taxpayers' business was that of investing the funds of their security holders for the primary purpose of deriving income from investments. This business was managed by the taxpayers' directors in Scotland, and transactions effected through brokers in the United States without the intervention of an agent ~~actually~~ present in the United States; are required by statute to be treated as effected outside the United States. Consequently, the regular business of investing in securities was completely carried on outside the United States. The taxpayers can not be held to be engaged in business within the United States merely because dividends were collected, books kept, and other incidental functions were performed within the United States. The Treasury Regulations provide that the "office or place of business" within the United States required by the statute for classification of a foreign

corporation as a resident must be a place for the regular transaction of business and not one where only casual or incidental transactions might be or are effected. The regulation is not to be interpreted as requiring only an office where records are kept or an agent may be found or where any activities are carried on, without regard to their nature. The taxpayers' "office" in the United States was not a place intended to be used for the transaction of their regular business of making investments, either presently or potentially. Such business was conducted abroad in its entirety, and the local office was used solely for incidental transactions, such as collecting dividends, keeping books, and the like. That the transactions were numerous, involved large sums of money, and that the American office was vested with some discretion with respect to the affairs handled by it, is of no consequence, since the office was not used for the transaction of the regular investment trust business of the taxpayers.

ARGUMENT

THE TAXPAYERS WERE NOT ENTITLED TO BE CLASSIFIED AS RESIDENT FOREIGN CORPORATIONS DURING THE TAXABLE YEARS

Introduction. It seems clear that the question to be determined by this Court is one of law, involving the meaning and application of Section 231 (b) of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code to undisputed facts,

and that the principle of finality of decisions of the Board of Tax Appeals (see *Dobson v. Commissioner*, 320 U. S. 489, rehearing denied, 321 U. S. 231) is inapplicable here. The issue tendered by the Government is whether an office maintained by foreign investment trusts, at which records were kept and dividend income was received but at which the regular investment business of the corporations was not transacted, is the type of office contemplated by the statutory provisions, as interpreted by the applicable regulations. There is no substantial controversy between the parties as to the subsidiary facts, i. e., what the activities of the taxpayers were. This was plainly an issue for determination by the Board of Tax Appeals as trier of the facts, and as to which the *Dobson* principle is clearly applicable. The dispute here is as to the legal significance of the undisputed facts, i. e., the scope of the statute—a question which we do not believe Congress intended to leave to final determination by the Board of Tax Appeals.

Appellate review of Board decisions was first provided for in Section 1003 (b) of the Revenue Act of 1926 (reenacted as Section 1141. (6) (1) of the Internal Revenue Code): "Upon such review, such courts shall have power to affirm or, if the decision of the Board is not in accordance with law, to modify or to reverse the decision."

of the Board, with or without remanding the case for a rehearing, as justice may require." The legislative history of this provision shows that Congress plainly intended review to extend to questions such as that involved here. The committee reports expressly stated that the reviewing courts "may consider, for example, questions as to * * * the proper interpretation and application of the statute or any regulation having the force of law * * *" (H. Rep. No. 1, 69th Cong., 1st sess., pp. 19-20 (1939-1 Cum. Bull. (Part 2) 315, 328); S. Rep. No. 52, 69th Cong., 1st sess., p. 25 (1939-1 Cum. Bull. (Part 2) 332, 339)). Both of the courts below treated the question presented as one of law, as did the Circuit Court of Appeals for the Second Circuit in *Linen Thread Co. v. Commissioner*, 128 F. (2d) 166, certiorari denied, 317 U. S. 673.

Section 231 of the Revenue Act of 1936 (Appendix, *infra*), which applies to the years 1936 and 1937, divided foreign corporations, for purposes of taxation, into non-resident and resident corporations. Non-resident foreign corporations were defined as those not engaged in trade or busi-

* The years 1938 and 1939 are governed by the corresponding provisions of the Revenue Act of 1938 and the Internal Revenue Code, respectively, which are printed in the Appendix, *infra*. These provisions are substantially the same as those in the Revenue Act of 1936, to be discussed, except that the rate of tax in the case of a resident foreign corporation in 1938 and 1939 was 19%.

ness and having no office or place of business within the United States. They were taxed on their gross income from sources within the United States (excluding capital gains) at a flat rate of 15%, except that in the case of dividends the rate was 10%. The amount of this tax was generally required to be withheld at the source. Section 144, Revenue Act of 1936.

Resident foreign corporations were defined as those engaged in trade or business or having an office or place of business within the United States. They were required to file returns by Section 235 of the Revenue Act of 1936, and were liable for tax at a rate of 22% upon "normal-tax net income" only, which was defined as the net income minus a credit for interest received upon obligations of the United States or of Government corporations and a dividends received credit of 85% of the dividends received from domestic corporations subject to tax. Sections 13, 26, and 231 (b) (Appendix, *infra*).

These provisions of the Revenue Act of 1936 constituted a new plan for taxing foreign corporations. Under the Revenue Act of 1934, c. 277, 48 Stat. 680, all foreign corporations were taxable like domestic corporations, and at the same rates, on their "net income," but only on net income, including capital gains, from sources within the United States. All foreign corporations were required to file returns in order to obtain the benefits of the deductions which the law allowed.

them. But if a foreign corporation was not engaged in trade or business or had no office or place of business within the United States, a withholding tax of 13 $\frac{3}{4}$ % was withheld at the source on certain types of income and the foreign corporation received credit for the amount withheld against its total income tax as computed on its return. See Sections 143, 144, and 231-236 of the Revenue Act of 1934.⁵

The committee reports with respect to the 1936 Act recognized that the tax on capital gains in the case of non-resident aliens and foreign corporations presented difficulties with respect to collection, and that the new surtax on undistributed profits was not well adapted to foreign corporations. The reports reflected the belief of Congress that the revised system in the 1936 Act would be productive of substantial amounts of additional revenue, since it replaces a theoretical system impractical of administration in a great number of cases.⁶ S. Rep. No. 2156, 74th Cong.,

⁵ The same method of taxing foreign corporations was employed in earlier Acts. See Sections 143, 144, 231-236 of the Revenue Act of 1932, c. 209, 47 Stat. 169; Sections 144, 145, 231-236 of the Revenue Act of 1928, c. 852, 45 Stat. 791; Sections 217, 233, 234 (b), 237, 239 of the Revenue Acts of 1926, c. 27, 44 Stat. 9, and 1924, c. 234, 43 Stat. 253; Sections 217, 232, 233, 234 (b), 237, 239 of the Revenue Act of 1921, c. 136, 42 Stat. 227.

⁶ The advisability of exempting non-resident aliens and non-resident foreign corporations having investments in securities from the tax on capital gains and of substituting a withholding tax on dividends and interest, was indicated by a witness appearing before the Ways and Means Committee.

2d Sess., pp. 21 *et seq.* (1939-1 Cum. Bull. (Part 2) 678, 691-693; H. Rep. No. 2475, 74th Cong., 2d Sess., pp. 9 *et seq.* (1939-1 Cum. Bull. (Part 2) 667, 673-674).) The scheme of taxing foreign corporations inaugurated by the Revenue Act of 1936 was continued in the Revenue Act of 1938, c. 289, 52 Stat. 447, and the Internal Revenue Code. However, by Section 160 of the Revenue Act of 1942, c. 619, 56 Stat. 798, the definition of "resident" foreign corporations has been amended to exclude corporations having offices here but not actually engaged in trade or business within the United States.

Classification of the taxpayers as resident foreign corporations would result in substantial tax

Another witness presented similar arguments with respect to transactions on commodity exchanges. See Hearings Before the House Ways and Means Committee, 74th Cong., 2d Sess., on the Revenue Act of 1936, pp. 461-474, 369-379. From this it appeared that insofar as security and commodity transactions are concerned, the income tax in general, and particularly the tax on capital gains, was not being collected, that the tax on capital gains caused ill will, that foreign investors were withdrawing from United States markets as a result of the tax, and that elimination of the tax on capital gains would be compensated for by increased trading and investments in the United States, and hence greater revenue resulting from transfer taxes, larger incomes of United States brokers, and larger incomes subject to withholding tax from foreign investments. Text writers have also expressed similar opinions. Angell, *The Nonresident Alien: A Problem in Federal Taxation of Income*, 36 Col. L. Rev. 908 (1936); King, *Collecting the Revenue—Current Developments*, 14 The Tax Magazine 586, 589-590 (1936).

The 1942 amendment was not made retroactive, and hence does not control the taxable years here involved.

savings. Since the tax of residents is computed upon "net" income from sources within the United States (rather than gross income, as in the case of a non-resident), the taxpayers, if classed as resident corporations, will be allowed to deduct all their expenses connected with income from sources within the United States. Section 232, Revenue Act of 1936 (Appendix, *infra*). These include the British taxes paid on United States income, other taxes, New York "office" expenses, custodian charges, commissions on sales of securities, and the proportionate part of interest and general and administrative expenses in the ratio that the gross income from sources within the United States bears to total gross income. The taxpayers will also be entitled to receive a credit against net income equal to 85% of the dividends received from domestic corporations.* The returns for 1936 and 1937, filed on the assumption that the taxpayers were resident corporations, show that the dividends received credit in each instance exceeded the net income. (Tr. 444-460, 461-477, 511-533, 534-548, 581-598, 599-609).*

* Section 26 (b) of the Revenue Act of 1938 contains a limitation that the dividends received credit shall not exceed 85% of the "adjusted net income." But the 1936 Act had no such limitation and allowed the 85% credit in full even though, as here, the credit eliminated net income in each case in 1936 and 1937.

* The designation "Tr." refers to the typewritten original transcript of record in Nos. 52-54, forwarded to this Court by the Clerk of the Circuit Court of Appeals for the Fourth Circuit.

A. The taxpayers were not "engaged in trade or business" within the United States

As the first alternative permitting classification as a resident foreign corporation, Section 231 (b) prescribes that the foreign corporation must be engaged in trade or business within the United States. Although the taxpayers contended that they were engaged in business within the United States, neither of the lower courts nor the Board decided this question.¹⁰ We submit, however, that the facts do not support the conclusion that the activities in the United States of the taxpayers constituted the doing of business.

The taxpayers' business, as found by the Board (R. 76), was that of "investing the funds of its security holders for the primary purpose of deriving income from investment." The term "investing" means, of course, the initial purchase of securities, the subsequent sale of securities which no longer produce sufficient income, and the reinvestment of the funds in other securities. The investment business was transacted at the taxpayers' home offices in Scotland, through their boards of directors. (R. 31-32, 35-36, 37.) The directors managed the taxpayers' affairs and determined their investment policies. They supervised investments in the United States (which were less

¹⁰ The Board's opinion suggests, however, that in its view the taxpayers were probably engaged in business activities in this country. (R. 84.)

than half of each taxpayer's total investments (R. 76)), decided what purchases and sales of securities were to be made, and gave the orders therefor directly to brokers either in this country or abroad. Distribution of profits to taxpayers' stockholders was also decided upon and handled entirely by the home offices in Edinburgh. (R. 36.) The office of the taxpayers in the United States transacted no part of those affairs. In fact, when the office was opened, Scottish notified all its correspondents in New York as follows (R. 43-44):

We shall be obliged if you will forward to Mr. Cooper copies of all Contract Notes, cash and delivery advices, and statements of account in connection with any transactions which we may have with you on or after today.

We shall be glad if you will continue to send the principals of all such documents direct to us as heretofore. *All letters in connection with our investments should be sent here as previously, and all instructions regarding transactions will be sent from here.* [Italics added.]

In determining whether the taxpayers were engaged in business within the United States, all of these activities relating to the management of the business must necessarily be excluded from consideration inasmuch as they were carried on outside this country. And not only must the taxpayers' "business" status be decided solely on the basis of their activities within the United States,

but Section 211 (Appendix, *infra*) provides that the phrase "engaged in trade or business within the United States" does not include transactions in securities in the United States effected through resident brokers or custodians.¹¹ Brokers and custodian banks in the United States executed all purchases and sales of securities upon order from the taxpayers' home offices; they collected interest on bonds, and had custody of and control over the securities. These activities also, therefore, must be excluded from consideration under Section 211.

Only if the taxpayers' remaining activities in the United States, consisting of those performed at their New York office, constituted their trade or

¹¹ This provision was added by the Senate Finance Committee with the intent of clarifying the meaning of the phrase "engaged in trade or business within the United States" S. Rep. No. 2156, 74th Cong., 2d Sess., p. 22 (1939-4 Cum. Bull. (Part 2) 678, 692). The provision is in accord with the decisions. A foreign corporation buying and selling securities in the United States through banks and brokers, and not otherwise engaged in business here, was held not to be carrying on business in the United States within the meaning of the capital stock tax laws. *Union Internationale de Placements v. Hoey*, 96 F. 2d 591 (C. C. A. 2d). But where other extensive business activities, in addition to transactions through brokers, were engaged in in the United States, the corporation was held to be carrying on business. *Berliner Handels-Gesellschaft v. United States*, 30 F. Supp. 490 (C. Cls.), certiorari denied, 309 U. S. 670. Cf. *Bank of America v. Whitney Bank*, 261 U. S. 171, holding that a foreign corporation is not considered to be doing business in a state so as to be amenable to service of process, when it carries on its only transactions through correspondent or custodian banks.

business may taxpayers be classed as resident corporations. Those activities may fairly be summarized, we think, as the collection and deposit of dividends on stocks owned in United States corporations, the maintenance of full bookkeeping records regarding transactions in the United States, the transmission to the home office of corporate data and information regarding developments in the United States, the preparation of income tax returns, and the payment of local office expenses. The local office possessed no authority to select the depository for the dividend checks, or to direct purchases or sales of securities. It did not have custody of the securities. It had no control over the income collected, except for the limited purpose of drawing upon it to pay local office expenses subject to a maximum limit, never approached (R. 38), of \$60,000 per year which represented only a small part of the dividends received. It did not arrange for payment when a security was purchased, nor receive payment when one was sold. (R. 17, 28-29.) In fact, it did not know that a purchase or sale of a security had been made until it was advised by a local broker or bank, at which time it recorded the change in the security account. (R. 7, M.) Cooper did have the authority to direct the taxpayers' nominees to sign proxies for stockholders' meetings of corporations in which the taxpayers owned stock, if nothing of importance was to be

voted on (R. 27, 42-43); to dispose of stock rights in the case of British or Second British (R. 28, 42, 65-66);¹² and where only part of the stock owned in a single corporation was sold, to advise the custodian bank which certificates to deliver to the broker.¹³

There can be no question, under cases involving the doing of business generally, that the taxpayers' activities within the United States, excluding those effected through brokers and custodian banks, did not constitute the doing of business.¹⁴ The mere collection of income on invest-

¹² The Board found (R. 80) that Cooper had authority to direct nominees to sign proxies and to direct the disposition of stock rights and scrip. But the record does not support this broad statement of authority. Cf. R. 55-56, 57-59, 59-61, in which Cooper's authority is specifically set forth. From this it appears that he was to represent each taxpayer at stockholders' meetings only on instructions from the home office.

¹³ Since Cooper directed the preparation of the taxpayers' United States income tax returns, this authority was doubtless placed in his hands so that he might select the certificates representing stock having a cost basis most favorable to the taxpayers from a tax standpoint. (Cf. R. 36.) But the record discloses that on some occasions the taxpayers even instructed Cooper as to which particular shares of stock to deliver. (R. 66-67.)

¹⁴ The limited authority given Cooper did not include the power to conduct an investment business. The right to direct that proxies be signed in cases where no business of importance was to be transacted, of course, was ministerial only and had no effect on the investments. The right to dispose of stock rights and to direct the delivery of a specific certificate of stock upon sale did not give him powers over purchases and sales generally. Nor did Cooper's practice of

ments, keeping of books, and preparation of tax returns, divorced entirely from the management of the property, have consistently been held not to constitute "engaging in business". Cf. *McCoach v. Minchill Railway Co.*, 228 U. S. 295; *United States v. Emery*, 237 U. S. 28; *Zonne v. Minneapolis Syndicate*, 220 U. S. 187; *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503; *Higgins v. Commissioner*, 312 U. S. 212. And similar activities are not regarded as "carrying on or doing business" within the meaning of the capital stock tax law. *Continental Baking Corp. v. Higgins*, 130 F. 2d 164 (C. C. A. 2d); *General Ribbon Mills v. Higgins*, 115 F. 2d 472 (C. C. A. 2d); *United States v. Three Forks Coal Co.*, 13 F. 2d 631 (C. C. A. 3d); *Rose v. Nunnally Inv. Co.*, 22 F. 2d 102 (C. C. A. 5th), certiorari denied, 276 U. S. 628; *Eaton v. Phoenix Securities Co.*, 22 F. 2d 497 (C. C. A. 2d); *Del Norte Co. v. Wilkinson*, 28 F. 2d 876 (E. D. Wis.). Compare *United States v. Peabody Co.*, 104 F. 2d 267 (C. C. A. 6th); *New Haven Securities Co. v. Bitgood*, 87 F. 2d 759 (C. C. A. 2d); *Brooklyn Trust Co. v. Commissioner*, 80 F. 2d 865 (C. C. A. 2d); *Ittleston v. Anderson*, 67 F. 2d 323 (C. C. A. 2d); *Stanley Securities Co. v. United States*, 38 F. 2d 907 (C. Cls.), certiorari denied, 282 U. S. 845.

sending recommendations to the taxpayers' home offices regarding reorganizations give him any authority over investments, for the decisions with respect to the taxpayers' participation in reorganizations were made in Edinburgh.

Furthermore, insofar as the requirements for qualification as a resident foreign corporation are concerned, it is clear that by excluding transactions in stocks and securities effected through resident brokers or custodians from the definition of "business," Congress intended that a stricter rule apply in the case of an investment business. It is a reasonable inference that such a distinction was made in order to prevent a claim such as is made here, namely, that business activities are carried on in the United States, even though only mechanical, routine activities are performed here and all the essential matters involving exercise of judgment and discretion are conducted elsewhere.¹⁵ Congress must be taken to have intended that the requisite "performance of personal services" in the United States, referred to in Section 211, should include the giving of instructions to the brokers, commission agents, and custodians by some resident of the United States. In the cases at bar all such instructions came from Scotland. If Congress believed it important to require that a resident place the orders, and made a distinction between giving the orders and executing the orders, it would seem that a similar distinction should be made between the giving of

¹⁵ A writer has expressed the opinion that Section 211 was obviously designed to attract business in securities to United States brokers and custodians without rendering the alien liable as a resident by such activities. 8 Mertons, *Law of Federal Income Taxation* (1942) 273, note 5.

the orders and the mere recording of the transactions.

Congress also provided in Section 211 that engaging in trade or business within the United States does not include even the giving of orders to buy and sell by a non-resident alien individual, resident in the United States for less than 90 days during the taxable year and receiving \$3,000¹⁶ or less for his services. It would be incongruous that Congress should be willing to domesticate the purchases and sales of securities by a foreign corporation through resident brokers when, as here, it maintained no resident representative with authority to buy and sell, for any period of the year.

There is practical basis for our construction, for if the business were domesticated in the United States in the sense for which we contend, some of the taxpayers' responsible officers would be here, a substantial force of employees would be required, and the activities of the business would contribute to the production of the additional taxes which Congress anticipated from the new system inaugurated by the 1936 Act. The taxpayers owned nearly \$50,000,000¹⁷ worth of United States securities at the end of 1936. Their business consisted of the supervision of such investments. That business was conducted from

¹⁶ This amount is excluded from the taxable income of such non-resident alien by Section 119 (a) (3).

Scotland, and hence the expenses of the United States office amounted to only \$3,292.11 for 1936; \$17,229.04 for 1937; \$18,251.86 for 1938; and \$16,455.92 for 1939. (R. 81.) This scarcely supports the view that any substantial part of taxpayers' business was domesticated in the United States.

It is true that the taxpayers' office received the dividends on their securities, but this, too, was a purely mechanical operation involving no discretion or judgment and, despite its value and importance otherwise, was purely incidental to the ownership of the securities. The same is true of the other minor activities performed in the taxpayers' office; they do not take on added significance because the person in charge was given the title of assistant secretary. Whether business is actually carried on, within the meaning of the statute, does not turn on labels.

Accordingly, we submit that the taxpayers were not engaged in trade or business within the United States during the taxable years.

B. The taxpayers did not have "an office or place of business" within the United States

As the second alternative for classification as a resident foreign corporation, Section 231 (b) prescribes that the foreign corporation must have an office or place of business within the United States. Article 231-I of Treasury Regulations 94 and 101 (and Section 19.231-I of Regulations 103), pre-

vides that the term "office or place of business" implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are effected. This provision has been approved as a reasonable interpretation of the statute. *Linen Thread Co. v. Commissioner*, 128 F. 2d 166 (C. C. A. 2d), certiorari denied, 317 U. S. 673; *Aktiebolaget Separator v. Commissioner*, 45 B. T. A. 243, affirmed *per curiam*, 128 F. 2d 739 (C. C. A. 2d), certiorari denied, 317 U. S. 661. Furthermore, the statute was reenacted without change in the Revenue Act of 1938 and the Internal Revenue Code. Substantial weight is to be accorded this implicit legislative approval of the article, first promulgated in Treasury Regulations 94 under the Revenue Act of 1936. *Taft v. Commissioner*, 304 U. S. 351, 357; *Linen Thread Co. v. Commissioner*, *supra*.

Thus the statute, as interpreted by the regulations, requires that the office be a place intended for the transaction of the corporation's business in the United States, either presently or in the future. This construction is in accord with the accepted definitions of the word "office", which are intimately associated with the transaction of business. See also *Bradley v. Certigue Mining & Dredging Co.*, 93 Misc. (N. Y.) 519, 521, holding that the term "office" implies a place for the regular transaction of business. This construction is also required, we think, by the statutory

description of a resident corporation as one engaged in trade or business within the United States or having an office or place of business therein. It seems unlikely that Congress intended by such use of the word "office" to denote something other than a place of business. The words "place of business" are either descriptive of the word "office", to which they are conjoined, or the terms "office" and "place" as used in the statute are both qualified by "of business".

This does not mean, of course, that the term "office or place of business" is identical with engaging in business. If the office is a place intended to be used for the business purposes for which the corporation was organized, it would doubtless suffice under the statute, even though such activities were not immediately performed through the office. In short, the statute makes the status of a foreign corporation depend upon the purpose for which the office is established; if it was established to care for the corporation's regular or ordinary business, then the office suffices to domesticate the corporation. This was the construction given to the statute by the Board in the *Aktiebolaget* case, *supra*, p. 249, and by the Circuit Court of Appeals for the Second Circuit in the *Linen Thread* case, *supra*.

As a general proposition, a corporation may not do business in this country without having an office

here, and many corporations with offices here are actually doing business. But it does not follow that Section 231 should be construed to mean that any leased space will suffice as an office. Congress hardly intended that a foreign corporation could qualify as a resident here merely by renting a room in an office building and calling it an office.

In the court below the taxpayers contended that Section 231 is based upon considerations of collectibility and ease in administration of the tax, and that it should be interpreted in such a way as to permit classification as a resident if the foreign corporation has a properly authorized agent at a fixed place where adequate records of the corporation's American income may be found, irrespective of whether the office was intended for the transaction of business. But that conclusion is inconsistent with the statutory language which indicates strongly that the office must be related to the corporation's business. If Congress had wished to include as residents, corporations having agents and books here, even though no business were done or contemplated, it could easily have so provided in clear terms. But Congress did not use words expressing such a purpose, and we must "take the statute as we find it." *Ander-son v. Wilson*, 289 U. S. 20, 27. Furthermore, since every office of a corporation does not keep books, Congress could not have achieved the purpose which the taxpayers ascribe to it merely by

requiring that an office be maintained here. The Government's construction of the statute would more closely effectuate the assumed purpose of Congress, for any office which actually transacted the United States business naturally would keep books. Accordingly, Congress seized upon the vital element when it identified the office as a place where the United States business was conducted.

In any event, the regulations have resolved these doubts by expressly requiring that the office be intended for the transaction of the regular corporate business, and the regulations being reasonable, should be controlling. There is nothing in the legislative history to show that Congress intended to classify as an office every place where records are kept and employees are found. Moreover, the mere presence of books and agents without more would not achieve the ease of administration and the additional revenue which the committee reports, *supra*, indicate that Congress expected to gain from the legislation.

Furthermore, by Section 160 of the Revenue Act of 1942, Congress eliminated the words "having an office or place of business therein" from the definition of a resident foreign corporation. H. Rep. No. 2333, 77th Cong., 2d Sess., p. 50, states, with reference to the reasons for the change:

¹⁷ See also S. Rep. No. 1631, 77th Cong., 2d Sess., p. 135, as follows:

A tendency has arisen, principally on the part of foreign corporations which are substantial holders of the

The income-tax status of nonresident aliens and foreign corporations engaged in trade or business in the United States of having an office or place of business here differs materially from that of other nonresident aliens and foreign corporations. In many cases the advantages are such that it is profitable to maintain an office in the United States, or the semblance of one, with no purpose of transacting any business in this country. Section 143 of the bill, therefore, amends several provisions of existing law to make the engaging in trade or business here the sole criterion.

Although this amendment was not made retroactive to earlier years, it indicates that Congress associated the term "office" with a purpose to transact business within the United States, es-

stock of domestic corporations and, occasionally on the part of nonresident alien individuals, to attempt to establish that they have an "office or place of business" within the United States and hence secure the very different tax treatment accorded taxpayers within class (b). Since such corporations and individuals engage in no other economic activities in the United States, they cannot be said to be engaged in trade or business within the United States.

It appears to your committee to be in the interests of good administration to establish but one test (as is done with respect to capital-stock tax in section 1200 of the Code) in ascertaining the classification of foreign entities, namely, whether or not it is engaged in trade or business within the United States. Such amendment narrows sharply the field of uncertainty arising in such cases and removes a possible avenue of tax avoidance to large foreign corporate and other holders of domestic securities.

pecially in the case of corporations investing in securities.

We submit that the taxpayers' office was not established as a place for the regular transaction of their businesses, either presently or in the future. Quite clearly the office did not transact any of the investment business in the taxable years, as has already been shown, nor did the taxpayers attempt to show that the office was to be entrusted with the transaction of any part of the investment business in the future.² On the contrary, it is clear from the evidence that the taxpayers never intended to transfer to their office in the United States either the determination of investment policies, the powers of management over United States securities, the power to decide upon and to order purchases and sales of securities, or the power to reinvest trust funds and control the income. These constituted the essential aspects of the taxpayers' regular and ordinary business. The duties which were delegated to the office in the United States, the collection of income, the keeping of books, and preparation of tax returns, were only incidental to the regular business of owning investments. The

² The Board found that the taxpayers' purposes in opening an office in the United States were to gain certain tax advantages, to keep in closer touch with their United States investments, and to do for themselves what had formerly been done for them by custodian banks. (R. 77.) There is no finding that their purpose was to transact any part of their investment business within the United States.

taxpayers' United States office was, therefore, not "an office or place of business within the United States" within the meaning of the law and the regulations.

The Circuit Court of Appeals for the Third Circuit reached this conclusion with respect to the years 1938 and 1939. (Nos. 220-222, R. 19-21.) It held that, under the facts of record, the only regular business of the taxpayers was the investment business, consisting of the purchase and sale of securities with a view to disposing of unsatisfactory shares and reinvesting in others, and that this business was carried on exclusively at Edinburgh, Scotland, through the taxpayers' boards of directors. Since the local office established by the taxpayers handled only routine matters incidental to the investment business, it was held not to be an office for the transaction of the regular business of the corporations, and therefore not an office as defined in the statute and regulations. The fact that the incidental detail handled in the United States office was voluminous was held to be without significance.

The Circuit Court of Appeals for the Fourth Circuit, however, decided that taxpayers had an office or place of business within the United States in 1936 and 1937, on the ground that the office handled a large volume of transactions.¹⁹ In

¹⁹ It may be noted that the Board also relied heavily upon the volume of the transactions handled by the taxpayers' local office (R. 83.)

support of its conclusion, the court noted that Cooper's duties were varied and important; that he was vested with discretion in connection with them; and that the transactions passing through his office with regard to the investments were numerous and involved large sums of money. (R. 113.) Thus, the court did not attach any significance to the fact that the United States investments were not managed from that office, and indeed it declined even to inquire whether each activity of the New York office could be considered as only casual or incidental to the regular business of the corporation. We believe, therefore, that its decision is not in accordance with the statute as interpreted in the regulations.

If the Circuit Court of Appeals for the Fourth Circuit and the Board meant to interpret the regulation as requiring merely an office which would handle a large volume of transactions, we submit that they were clearly in error. The term "regular business" used in the regulation obviously refers to the ordinary business for which the corporation is organized. Although the term "casual" in the regulation might mean that a substantial volume of transactions is required, as distinguished from an occasional one, the term "incidental" can refer only to the quality or the nature, rather than the number and quantity, of the transactions. Its clear meaning is that activities which are merely incidents of the regular

business are not sufficient. Although a lack of volume of transactions, even though consisting of the regular corporate business, might prevent an alleged office from coming within the regulations, there is no basis for concluding that mere volume alone, unrelated to the regular business, would be sufficient.

The taxpayers contend that the collection of income was not an incidental activity but constituted their regular business. This contention was rejected by the decision below of the Circuit Court of Appeals for the Third Circuit and by the *Linen Thread* and *Aktiebolaget* cases.²⁰ Moreover, the Board's finding is that taxpayers' business was that of "investing" funds; there was no finding that the business was that of collecting income or keeping books. Although the purpose of the busi-

²⁰ In the *Linen Thread* case the taxpayer was a manufacturer of thread with large and varied investments in securities in the United States. It established an office in the United States to collect and deposit the dividends and interest upon the investments, to file tax returns, to keep books, and to pay local expenses. The resident agent at the office also "looks after" the investments generally (p. 168) and kept the company informed of any developments in the United States which might affect its business. The Circuit Court of Appeals held that maintenance of an office which performed these activities but which was not used or kept for the transaction of the taxpayer's "ordinary" business was not an office within the meaning of the Regulations. *Aktiebolaget Separatör v. Commissioner*, *supra*; involved similar facts. Cf. *Recherches Industrielles v. Commissioner*, 45 B. T. A. 253, appeal dismissed October 4, 1943 (C. C. A. 4th).

ness, as the Board found, was to derive income, the income was acquired as an incident of carrying on the investment business. In this respect an investment trust stands in no different position from any other company whose ultimate objective is earning and collecting profits. The nature of the business is determined by the activity or effort which produces the income, and profits are collected only after the business activities producing them have been completed.

Although the dividends received in the taxable years were large,²¹ and the book entries numerous, they were the direct result of the fact that each taxpayer had large amounts invested in securities in the United States. The taxpayers' directors were required to supervise investments in excess of \$25,000,000 for Scottish, \$16,000,000 for British, and \$8,000,000 for Second British, and, when necessary, to reinvest the amounts so that a satisfactory income was assured. Frequent sales were made and in fact the receipts from sales of securities in each year far exceeded in amount the dividends received. (Cf. notes 3 and 21; *supra*.) Business judgment and knowledge were employed

²¹ The taxpayers received dividends from domestic corporations as follows (R. 79):

	1936	1937	1938	1939
Scottish	\$66,942.76	\$1,116,108.97	\$780,021.43	\$731,180.92
British	623,119.74	823,252.30	508,923.43	579,375.47
Second British	342,508.75	336,289.85	262,292.80	296,745.11

in handling the investments which were obviously lacking in the routine function of receiving dividend checks on existing investments. In these circumstances, it seems clear that the collection of dividend income was subordinate to and an incident of taxpayers' regular business of making investments. Even less would bookkeeping, preparation of tax returns, transmission of information and recommendations to the home office, payment of local expenses, and other minor activities performed at the United States office²² constitute the transaction of the taxpayers' regular business.

It is manifest that the taxpayers' American office was maintained during the taxable years primarily in the belief that through it the taxpayers could obtain classification as residents and thus effect large savings in their United States tax liability.²³ No other purpose for establishing

²² Practically all of the work performed by the office consisted of keeping records, receiving dividend checks, and paying expenses incidental to the office. (R. 36.)

²³ It is possible that there might have been no tax saving if large capital net gains on sales of securities had been realized in any year, as the Board stated. (R. 44.) But it is significant that none of the taxpayers had an excess of gains over losses in any of the years 1936-1939 inclusive, except that Scottish had a small net gain of \$2,475.15 in 1937. (R. 67-74; Tr. 486-487, 502-503, 558, 573-574, 618, 630-631.) It is apparent, of course, that an investor owning large numbers of different securities can, in the normal course, neutralize the gain he may have on one sale by selecting another security which can be sold at a loss.

However, the tax saving as a resident, in the case of an investment company, results largely from the fact that ex-

the office is likely. The only saving effected in the charges of the custodian banks was the elimination of collection fees formerly paid National City Bank by British and Second British. (R. 34-35.) And this was doubtless more than balanced by the office expenses incurred. Nor did the taxpayers secure valuable investment counsel service through establishing their office, for Cooper had had no previous experience as an investment counsel. (R. 39.) While the tax saving motive might be unimportant if the United States investment business had in fact been conducted from the local office, that motive is pertinent when considered with the nature of the activities assigned to the office as showing that no real office for the transaction of business was intended in the establishment of the taxpayers' United States office.

It is also to be observed that the New York office performed no greater services than had formerly been done for taxpayers by the custodian banks. The banks had formerly collected income, had forwarded notices and reports from corporations, and rendered financial service, and these functions were merely transferred to the local office. (Cf. R. 45-47.) Even the mainte-

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 nances may be deducted and that an 85% credit against net income for dividends received is allowed. The capital net gains would have to be large indeed in order to offset these advantages.

nance of records at the office seems to have added little. The banks of necessity had formerly sent statements to the taxpayers showing details of the income collected, purchases and sales of securities charged against the accounts, etc. The office set similar transactions up in bookkeeping form and sent duplicates of the entries to Edinburgh. However, the home offices could not use them in that form but were required to convert them into Sterling and "pick" them "up on their records." (R. 24.) The translation of the accounting records received from the New York office into usable form, therefore, apparently required substantial work on the part of the home office employees, as the conversion of detailed statements from the custodians had required formerly.

As has been shown, Congress provided in Section 211 that the phrase engaged "in trade or business within the United States"

does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian.

It follows that the offices of the brokers or custodian banks could not constitute an office or place of business for taxpayers within the United States. And no different result is to be achieved merely by transferring certain ministerial duties from the custodian banks to an alleged office.

The fact that space is leased, which in its outward aspect resembles an office, having desks, employees, books, letterheads, and telephones, is not significant. The office in the statutory sense must be a place for the regular transaction of business. The inference is inescapable that the taxpayers went through the formalities of opening an office to obtain the tax advantage of classification as a resident; but that they did not intend to, and in fact did not, effect any real change in their activities within the United States.

It may be argued that if the taxpayers are not held to be resident foreign corporations, then no foreign investment company could qualify as such under the statute and regulations. But this by no means follows. *B. W. Jones Trust v. Commissioner*, 132 F. 2d 914 (C. C. A. 4th), is authority that where United States investments are managed from the United States office, i. e., where an investment business is carried on there, a foreign corporation may qualify as a resident.²⁴

²⁴ In the *Jones Trust* case, the question was whether unincorporated foreign investment trusts had an office or place of business in the United States. The United States office was in charge of an American trustee who had custody of the United States securities and who had power to act for all the trustees. He and one English trustee held semiannual conferences at the office in the United States to decide what securities should be sold and what kept. All sales and purchases were made by the American trustee and collection of income was in his hands. The only activity performed

And it would indeed be discriminatory if, merely because they were investment companies, the taxpayers could qualify as residents by the simple expedient of maintaining an office which was not intended to be used for the transaction of their investment business, when other types of corporations having offices just as substantial and performing the identical functions as the taxpayers' offices are held not to qualify. *Linen Thread Co. v. Commissioner*, 128 F. 2d 166 (C. C. A. 2d), certiorari denied, 317 U. S. 673; *Aktiebolaget Separator v. Commissioner*, 45 B. T. A. 243, affirmed *per curiam*, 128 F. 2d 739 (C. C. A. 2d), certiorari denied, 317 U. S. 661.

Accordingly, it is submitted that the taxpayers maintained no place within this country which constituted an office within the meaning of Section 231 (b) of the Revenue Acts of 1936 and 1938, and of the Internal Revenue Code.

in England by the English trustees was the distribution of the income. Upon these facts the court held that the local office was the place from which the regular business of the trusts in the United States, as distinguished from casual or incidental transactions, was managed and that it qualified as an office or place of business within the meaning of the statute. Cf. *Fajardo Sugar Co. of Porto Rico v. Commissioner*, 20 B. T. A. 980, holding that an office or place of business is maintained within the United States where it was shown that the corporation's board of directors met at the office; that the officers managed the affairs and determined the policies of the company from that office; and that its books and files were kept there.

CONCLUSION

Since the taxpayers were not engaged in trade or business and had no office or place of business within the United States, the Circuit Court of Appeals for the Fourth Circuit erroneously classified them as resident corporations during 1936 and 1937, and the Circuit Court of Appeals for the Third Circuit correctly decided that they were non-resident foreign corporations during 1938 and 1939. Consequently the judgments in Nos. 52-54 should be reversed, and the judgments in Nos. 220-222 should be affirmed.

Respectfully submitted,

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APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 13. NORMAL TAX ON CORPORATIONS.

(a) *Definition.*—As used in this title the term “normal-tax net income” means the net income minus the sum of—

(1) *Interest on obligations of the United States and its instrumentalities.*—The credit provided in section 26 (a).

(2) *Dividends received.*—The credit provided in section 26 (b).—Such credit shall not be allowed in the case of a mutual investment company, as defined in section 48.

(3) *Dividends paid.*—In the case of a mutual investment company the credit provided in section 27, computed without the benefit of subsection (b) thereof (relating to dividend carry-over).

(b) *Imposition of Tax.*—There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation, a normal tax as follows;

SEC. 26. CREDITS OF CORPORATIONS.

In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

(a) *Interest on Obligations of the United States and Its Instrumentalities.*—The amount received as interest upon obligations of the United States or of corporations organized under Act of Congress which is allowed to an individual as a credit for purposes of normal tax by section 25 (a) (1) or (2).

(b) *Dividends Received.*—85 per centum of the amount received as dividends from a domestic corporation which is subject to taxation under this title. The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States.

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SEC. 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

* * * * *

(b) *United States Business or Office.*—
 * * * As used in this section, section 119, section 143, section 144, and section 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through

a resident broker, commission agent, or custodian.

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SEC. 231. TAX ON FOREIGN CORPORATIONS.

(a) *Nonresident Corporations.*—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(b) *Resident Corporations.*—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a), but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

(c) *Undistributed Profits Surtax.*—A foreign corporation shall not be subject to the surtax imposed by section 14.

(d) *Gross Income.*—In the case of a foreign corporation gross income includes only

the gross income from sources within the United States.

SEC. 232. DEDUCTIONS.

(a) *In General.*—In the case of a foreign corporation the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(b) *Charitable, and so forth, Contributions.*—The so-called "charitable contribution" deduction allowed by section 23 (q) shall be allowed whether or not connected with income from sources within the United States.

Revenue Act of 1921, c. 289, § 52 Stat. 447:

SEC. 13. TAX ON CORPORATIONS IN GENERAL.

(a) *Adjusted Net Income.*—For the purposes of this title the term "adjusted net income" means the net income minus the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

SEC. 14. TAX ON SPECIAL CLASSES OF CORPORATIONS.

(a) *Special Class Net Income.*—For the purposes of this title the term "special class net income" means the adjusted net income minus the credit for dividends received provided in section 26 (b).

(b) There shall be levied, collected, and paid for each taxable year upon the special class net income of the following corporations (in lieu of the tax imposed by section 13) the tax hereinafter in this section specified.

* * * *

(c) *Foreign Corporations.*—

(1) In the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, the tax shall be an amount equal to 19 per centum of the special class net income, regardless of the amount thereof.

(2) In the case of a foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, the tax shall be as provided in section 231 (a).

* * * *

SEC. 26. CREDITS OF CORPORATIONS:

In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

(a) *Interest on Obligations of the United States and its Instrumentalities.*—The amount received as interest upon obligations of the United States or of corporations organized under Act of Congress which is allowed to an individual as a credit for purposes of normal tax by section 25 (a) (1) or (2).

(b) *Dividends Received.*—85 per centum of the amount received as dividends from a domestic corporation which is subject to taxation under this title, but not in excess of 85 per centum of the adjusted net in-

come. The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States.

SEC. 231. TAX ON FOREIGN CORPORATIONS.

(a) *Nonresident Corporations.* — There shall be levied, collected, and paid for each taxable year, in addition of the tax imposed by sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country. For inclusion in computation of tax

of amount specified in shareholder's consent, see section 28.

(b) *Resident Corporations*.—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (c) (1).

(c) *Gross Income*.—In the case of a foreign corporation gross income includes only the gross income from sources within the United States.

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Section 232 of the Revenue Act of 1938 is the same as Section 232 of the Revenue Act of 1936.

The corresponding provisions of the Internal Revenue Code, applicable to the year 1939, are substantially the same.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

ART. 231-1. *Taxation of foreign corporations*.—For the purposes of this article and articles 231-3, 232-1, 235-1, 235-2, and 236-1, foreign corporations are divided into two classes: (a) foreign corporations not engaged in trade or business within the United States and not having an office or place of business therein at any time within the taxable year, referred to in the regulations as nonresident foreign corporations (see article 1001-8); and (b) foreign corporations which at any time within the taxable year are engaged in trade or business within the United States or have an office or place of business therein, referred to in the regulations as resident foreign corporations (see article 1001-8).

* * * * *

(b) *Resident foreign corporations*.—

As used in section 231, section 119, section 143, section 144, and section 211, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities (including hedging transactions) through a resident broker, commission agent, or custodian.

Whether a foreign corporation has an "office or place of business" within the United States depends upon the facts in a particular case. The term "office or place of business," however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.

Article 231-f of Treasury Regulations 101, promulgated under the Revenue Act of 1938 and Section 19.231-1 of Treasury Regulations 103, promulgated under the Internal Revenue Code for application to the year 1939, are substantially the same.

SUPREME COURT OF THE UNITED STATES.

Nos. 52-54 and 220-222.—OCTOBER TERM, 1944.

Commissioner of Internal Revenue,
Petitioner,

52 vs.
The Scottish American Investment
Company, Limited.

Commissioner of Internal Revenue,
Petitioner,

53 vs.
British Assets Trust, Limited.

Commissioner of Internal Revenue,
Petitioner,

54 vs.
Second British Assets Trust, Limited.

The Scottish American Investment
Company, Limited, Petitioner,

220 vs.
Commissioner of Internal Revenue.

British Assets Trust, Limited, Petitioner,

221 vs.
Commissioner of Internal Revenue.

Second British Assets Trust, Limited,
Petitioner,

222 vs.
Commissioner of Internal Revenue.

On Writs of Certiorari
to the United States
Circuit Courts of Ap-
peal for the Fourth
and Third Circuits.

[December 4, 1944.]

Mr. Justice MURPHY delivered the opinion of the Court.

We are confronted here with another aspect of the problem of the judicial reviewability of Tax Court determinations.

The three taxpayers involved in these cases are investment trusts organized under the laws of Great Britain, with principal offices in Edinburgh, Scotland. Each is engaged in the business of investing the funds of its security holders for the primary purpose of deriving income from investments. The Tax Court, formerly known as the Board of Tax Appeals, has held that these

2 *Com'r of Internal Revenue vs. Scottish American Inv. Co.*

taxpayers had an "office or place of business" within the United States during the four years in question and hence were entitled to be taxed as resident foreign corporations under Section 231 of the Revenue Acts of 1936 and 1938. 47 B. T. A. 274. Such a holding would result in substantial tax savings that would be unavailable to them had they not maintained such an office in this country. The tax returns for the various years having been filed in different collectors' offices, the Commissioner appealed to two Circuit Courts of Appeal. The Circuit Court of Appeals for the Fourth Circuit, dealing with the 1936 and 1937 tax returns, affirmed the Tax Court's decision as to those years. 139 F. 2d 419. But the Circuit Court of Appeals for the Third Circuit, considering the identical facts and substantially the same statutes and regulations, held that the taxpayers did not have an office or place of business within the United States during 1938 and 1939, the decision of the Tax Court as to those years was accordingly reversed. 142 F. 2d 401. The irreconcilable conflict between the two courts below led us to grant certiorari.

The Tax Court made virtually undisputed findings of fact which need not be repeated here in detail. In brief, it was found that the three taxpayers jointly appointed a member of an American accounting firm as their assistant secretary. He was instructed to establish and maintain an office in the United States for them in order to obtain better representation of their interests in this country, large amounts of American securities being held as investments by them. By establishing this office they also sought to obtain certain tax advantages. The office was accordingly opened and two full time assistants to the assistant secretary were employed. The American securities were kept in the custody of two banks through which the securities were bought and sold, and assistance on certain matters was obtained from the accounting firm. This office of the taxpayers kept full records concerning American holdings, collected and received dividends on such holdings, acted on proxies and performed other duties relative to the maintenance of these investments. The assistant secretary made periodic financial, economic and political reports to the home

(The taxpayers' returns for 1936 and 1937 were filed with the Collector of Internal Revenue for the District of Maryland. The 1938 and 1939 returns were filed with the Collector of Internal Revenue at Newark, N. J. Under § 1141 of the Internal Revenue Code, decisions of the Tax Court may be reviewed by the Circuit Court of Appeals for the circuit in which is located the Collector's office where the tax return is filed.

offices, as well as specific reports concerning particular holdings. United States tax returns were prepared in this office and local expenses were disbursed therefrom. All decisions as to the buying and selling of securities and as to investment policies, however, were made by the home offices in Edinburgh.

Certain inferences and conclusions were then drawn from these facts by the Tax Court. It refused to consider each separate activity in this office apart from its integral relation to the entire investment trust business and was of the opinion that "an office handling affairs to this extent must be regarded as real and substantial. It was here that a very large part of the affairs of petitioners in this country were taken care of." The Tax Court further concluded that this office was not a sham but was a place for the necessary transaction of the American affairs of the taxpayers: "the office was used for the regular transaction of business and not as a place where casual or incidental transactions might be, or were, effected."

Utilizing the provisions of Section 231(b) and of the regulations promulgated thereunder,² the Tax Court reached the ultimate conclusion that the taxpayers maintained an office or place of business within the United States and were therefore entitled to be taxed as resident foreign corporations. There is no charge here that the Tax Court failed to follow the applicable statutes or regulations. No clear cut mistake of law is alleged. Nor are any constitutional issues involved. The sole issue revolves about the propriety of the inferences and conclusions drawn

² Section 231(b) of both the Revenue Acts of 1936 and 1938 provides for taxes on resident foreign corporations, defining them as "a foreign corporation engaged in trade or business within the United States or having an office or place of business therein." Revenue Act of 1936, c. 696, 49 Stat. 1648, 1717; Revenue Act of 1938, c. 289, 52 Stat. 447, 520. The Tax Court and the two courts below did not pass upon the Commissioner's contention, renewed before us, that the taxpayers were not "engaged in trade or business" within the meaning of this section. We likewise do not discuss that claim here since it is sufficient if it be found that the taxpayers in this case had "an office or place of business" in this country. See *B. W. Jones Trust v. Commissioner*, 132 F. 2d 914, 917.

Art. 231.1 of Treasury Regulations 94, promulgated under the Revenue Act of 1936, provides in part: "Whether a foreign corporation has an office or place of business within the United States depends upon the facts in a particular case. The term 'office or place of business,' however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected." Art. 231.1 of Treasury Regulations 101, promulgated under the Revenue Act of 1938, and Section 19.231-1 of Treasury Regulations 163, applying to the year 1939, are substantially the same.

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from the evidence by the Tax Court. The taxpayers claim that these determinations are supported by substantial evidence and hence were not reversible by an appellate court. The Commissioner charges that the facts demonstrate that the American office was not intended to be used for the transaction of the regular business of making investments and that it was improper as a matter of law to classify the taxpayers as resident foreign corporations.

The answer is to be found in a proper realization of the distinctive functions of the Tax Court and the Circuit Courts of Appeal in this respect. The Tax Court has the primary function of finding the facts in tax disputes, weighing the evidence, and choosing from among conflicting factual inferences and conclusions those which it considers most reasonable. The Circuit Courts of Appeal have no power to change or add to those findings of fact or to reweigh the evidence. And when the Tax Court's factual inferences and conclusions are determinative of compliance with statutory requirements, the appellate courts are limited to a determination of whether they have any substantial basis in the evidence. The judicial eye must not in the first instance rove about searching for evidence to support other conflicting inferences and conclusions which the judges or the litigants may consider more reasonable or desirable. It must be cast directly and primarily upon the evidence in support of those made by the Tax Court. If a substantial basis is lacking the appellate court may then indulge in making its own inferences and conclusions or it may remand the case to the Tax Court for further appropriate proceedings. But if such a basis is present, the process of judicial review is at an end. *Helvering v. National Grocery Co.*, 304 U. S. 289, 294; *Wilmington Trust Co. v. Helvering*, 316 U. S. 161, 165; *Commissioner v. Bluminger*, 320 U. S. 467, 475; *Dobson v. Commissioner*, 320 U. S. 429.

Our examination of the record convinces us that the factual inferences and conclusions of the Tax Court are supported by substantial evidence. While questions as to the purchase and sale of American securities were made in the Edinburgh office, there was abundant evidence that the American office performed vital functions in the taxpayers' investment trust business. The uncontroverted evidence showed that this office collected dividends from the vast holdings of American securities and did countless other tasks essential to the proper maintenance of a large invest-

Com'r of Internal Revenue vs. Scottish American Inv. Co. 5

ment portfolio. Although some matters pertaining to the American business were taken care of by others, this office performed a very substantial part of these duties and could be held to have satisfied the statutory requirements. We cannot say that it was unreasonable for the Tax Court to conclude that this office was more than a sham and that it was used for the regular transaction of business. Hence it was proper as a matter of law for the Tax Court to classify the taxpayers as resident foreign corporations under Section 231 (b). We do not decide or ~~say~~ that the contrary inferences and conclusions urged by the Commissioner are entirely unreasonable or completely unsupported by any probative evidence. We merely hold that such contentions are irrelevant so long as there is adequate support in the evidence for what the Tax Court has inferred. It follows that the Tax Court's conclusions in this case cannot be set aside on appellate review.

Moreover, this case exemplifies one type of factual dispute where judicial abstinence should be pronounced. The decision as to the facts in this case, like analogous ones that preceded it,³ is of little value as precedent. The factual pattern is too decisive and too varied from case to case to warrant a great expenditure of appellate court energy on unravelling conflicting factual inferences. The skilled judgment of the Tax Court, which is the basic fact-finding and inference-making body, should thus be given wide range in such proceedings.

The judgment of the Circuit Court of Appeals for the Fourth Circuit is affirmed. The judgment of the Circuit Court of Appeals for the Third Circuit is reversed.

³ *Loose Thread Co. v. Commissioner*, 128 F. 2d 196; *Aktiobolaget Sjöpartiet v. Commissioner*, 45 B. T. A. 243, affirmed in 128 F. 2d 732; *B. W. Jones Trust v. Commissioner*, 132 F. 2d 914; *Papalo Sugar Co. of Porto Rico v. Commissioner*, 29 B. T. A. 480; *Recherche Industrielle v. Commissioner*, 45 B. T. A. 254.